

1 **IN THE UNITED STATES DISTRICT COURT**
2 **FOR THE WESTERN DISTRICT OF TEXAS**
3 **AUSTIN DIVISION**

4 MIKE BENAVIDES, VICTORIA BRANNING, WALTER)
5 BRANNING, KURTIS BROWN, THOMAS BRYAN, PETE)
6 DIDONATO, SUSAN ERWIN, BRYAN FITZPATRICK,)
7 CATHERINE GERAC, CAROL PIERCE, COREY)
8 RICKETSON, TEMPLE THOMAS, GARY WADHAM,)
9 GREGORY WELLER, DANI WINKLER, MICHAEL)
10 WRIGHT, GLENN ANDERSON, JANELLE BOONE,) AU:11-CV-00438-LY
11 AMELIA ZAPATA, GLEN WOSKY, PAUL ALVAREZ,)
12 MARK MONTGOMERY, JOHNNIE HALL, PAUL ALVAREZ,)
13 JANELLE BOONE, MICHAEL BROADWATER, JOHNNIE)
14 HALL, ERIC JAKUBAUSKAS, EDWARD JOHNS, MARK)
15 KARONIKA, DAVID LINDSLEY, JASON MARTIN, MARK)
16 MONTGOMERY, LANDON WILLHOITE, GLEN WOSKY,)
17 AMELIA ZAPATA,)
18)
19 Plaintiffs,)
20)
21 VS.) AUSTIN, TEXAS
22)
23 CITY OF AUSTIN,)
24)
25 Defendant.) NOVEMBER 5, 2012

15 **TRANSCRIPT OF JURY TRIAL**

16 BEFORE THE HONORABLE LEE YEAKEL

17 **VOLUME 1 OF 8**

18 *****

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24 Proceedings recorded by computerized stenography, transcript
25 produced by computer.

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09:02:39 1 (Open Court, prospective jury panel present)

09:02:39 2 THE CLERK: The Court calls this morning for jury

09:02:41 3 selection and trial Cause Number 11-CV-438, *Benavides*, and

09:02:47 4 others, v. *The City of Austin*. Is the plaintiff ready to

09:02:51 5 proceed?

09:02:52 6 MR. DEATS: The plaintiffs are ready to proceed,

09:02:54 7 Your Honor.

09:02:55 8 THE COURT: Is the defendant ready?

09:02:56 9 MR. COPPOLA: Defendant is ready, Your Honor.

09:02:57 10 THE COURT: Very good. Thank you.

09:02:59 11 Good morning, ladies and gentlemen. I would like to

09:03:02 12 welcome all of you, all members of the jury panel, to our

09:03:07 13 court, the United States District Court, here in Austin. My

09:03:12 14 name is Lee Yeakel, and I am one of two district judges for the

09:03:15 15 Austin Division of the Western District of Texas.

09:03:20 16 As, Ms. Demmings, the Division Deputy Clerk,

09:03:23 17 explained to you, the Western District of Texas consists of

09:03:26 18 seven divisions: Austin, Waco, San Antonio, El Paso, Del Rio,

09:03:34 19 Pecos, and Midland/Odessa.

09:03:36 20 The federal court in Austin considers appropriate

09:03:40 21 federal actions brought in Bastrop, Blanco, Burleson, Burnet,

09:03:46 22 Caldwell, Gillespie, Hays, Kimble, Lampasas, Lee, Llano, Mason

09:03:53 23 McCulloch, San Saba, Travis, Washington, and

09:03:58 24 Williamson Counties. As you can tell, the area covered by the

09:04:03 25 Austin Division is quite large, and that is the reason that

09:04:06 1 some of you were required to travel a substantial distance to
09:04:10 2 participate in these court proceedings. The Court recognizes
09:04:14 3 the sacrifices that many of you are making to perform this jury
09:04:19 4 service and appreciates very much your efforts.

09:04:26 5 Now you have been summoned to try a civil case. When
09:04:29 6 parties to a federal lawsuit like this one desire and qualify
09:04:32 7 for a resolution of their case by a jury, federal law entitles
09:04:37 8 them to receive the benefit of an impartial jury of their
09:04:41 9 peers. To obtain such a jury, persons are called from
09:04:46 10 throughout the area which comprises the particular division of
09:04:49 11 the district -- in this case, from those 17 counties I just
09:04:53 12 mentioned that make up the Austin Division of Western District
09:04:56 13 of Texas.

09:04:59 14 Persons are selected at random to assure that they
09:05:02 15 represent a cross-section of people, and it was this random
09:05:06 16 selection process which resulted in your being here today. In
09:05:11 17 fact, you were randomly selected by a computer. So if there
09:05:15 18 are any of you who believe a computer has never in the past
09:05:19 19 done you a favor, that may be reinforced in your mind today.
09:05:23 20 But we're glad to have you here.

09:05:26 21 Again, your participation in the jury process, which
09:05:29 22 is vital to our nation's judicial system, is especially
09:05:33 23 appreciated by the Court and the parties involved in this
09:05:36 24 litigation. Now, let me share with you a little bit about the
09:05:40 25 jury system and its importance to our society and why it is

09:05:47 1 important to this Court and to these parties before you and to
09:05:49 2 you.

09:05:50 3 Calling citizens to hear disputes has been known
09:05:53 4 throughout history. The jury system is mentioned as far back
09:05:58 5 as the Pentateuch, the first five books of the Hebrew Bible.
09:06:02 6 The Jewish people would impanel juries to decide questions of
09:06:05 7 property value and property ownership. There is some thought
09:06:10 8 that the reason we have had a standard 12 jurors in our typical
09:06:17 9 jury trial is a reflection of the 12 Tribes of Israel and the
09:06:20 10 12 Apostles, although today, we will only select eight jurors.

09:06:25 11 Modern juries have historic roots in parts of
09:06:29 12 Byzantine, Greek, Roman, and European systems. The Greeks
09:06:36 13 began using the jury system in about 1500 B.C. Greek juries
09:06:40 14 were sometimes huge. In fact, 501 jurors decided the fate of
09:06:46 15 Socrates. And many of you may have thought we had parking
09:06:49 16 problems out there today with the few of you who are present
09:06:51 17 here in the courtroom.

09:06:52 18 The Romans adopted the jury system from the Greeks,
09:06:56 19 and the Romans are responsible for bringing the jury system to
09:06:59 20 England in about the Fourth Century A.D. The English
09:07:04 21 experience has been a leading influence in shaping the modern
09:07:08 22 American jury system.

09:07:10 23 Following its advance by the Romans, England had a
09:07:14 24 rough system of juries in the late ninth century under Alfred.
09:07:18 25 The Normans following their arrival of the eleventh century,

09:07:25 1 established the foundation of the modern jury system.

09:07:27 2 In 1215 a tyrannical English King, King John,

09:07:31 3 attempted to do away with the right to trial by jury which had

09:07:35 4 been part of the English judicial system for over 700 years.

09:07:39 5 The English people would not stand for the deprivation of this

09:07:43 6 right, among others they cherished. And so in a misty meadow

09:07:47 7 called Runnymede, King John was forced to signed the Magna

09:07:50 8 Carta, which guaranteed the English people the right to jury

09:07:54 9 trials as well as other rights.

09:07:56 10 The language of the Magna Carta was so simple and so

09:08:01 11 well elegant that 28 states have adopted that language verbatim

09:08:06 12 in their state constitutions to guarantee the right to trial by

09:08:09 13 jury.

09:08:09 14 The concept of jury trials was so deeply ingrained in

09:08:14 15 the American colonists in the settling of America, that when

09:08:17 16 another tyrannical English king, King George, III, attempted to

09:08:21 17 deny the right to jury trials to the colonists,

09:08:24 18 Thomas Jefferson, writing for the Second Continental Congress,

09:08:30 19 in penning the complaints against the Crown in the Declaration

09:08:36 20 of Independence, set out the right to jury trial as one of the

09:08:39 21 specific bases for separation from England. The War of

09:08:42 22 Independence followed, and people fought and died to secure our

09:08:47 23 rights and independence. Today the United States Constitution

09:08:51 24 guarantees the right to jury trials.

09:08:53 25 Now, democracy makes very few demands of its

09:08:57 1 citizens. We're required to pay taxes and to render service in
09:09:00 2 time of war. Some have said jury service is akin in importance
09:09:05 3 to service for your country in time of war, and I have no
09:09:09 4 quarrel with that statement.

09:09:10 5 For the average citizen, there are in my opinion but
09:09:15 6 two things you must do to preserve democracy: Respond to jury
09:09:20 7 service and vote. You have done one of them by being here
09:09:23 8 today. And we have an important election tomorrow. If you
09:09:28 9 have not already voted, you should certainly do so.

09:09:31 10 And as an aside, you are going to be part of history
09:09:36 11 this week. Trials have been held in this courtroom where
09:09:41 12 you're currently seated since 1936. You are likely to be the
09:09:46 13 last jury to sit in this courtroom and conduct a trial. We
09:09:50 14 move and will be open on December 3rd at the first new
09:09:54 15 courthouse that Austin has had in those 76 years. It will be
09:09:58 16 located at 5th and San Antonio Street.

09:10:02 17 I will miss this courtroom. It has lot more majesty
09:10:08 18 than what the new courtrooms have. And I doubt that there will
09:10:11 19 be another jury trial scheduled here, so you will be the last,
09:10:15 20 and many of you, I feel certain, looking at you you were not
09:10:18 21 born when the first was held in this courtroom.

09:10:21 22 Now we are here to select a jury for a case styled
09:10:25 23 *Mike Benavides, and others, v. The City of Austin.* It is
09:10:32 24 numbered A-11-CV-438-LY on the docket of my court. What we are
09:10:38 25 doing now and for the next little bit is what we call

09:10:44 1 "voir dire," which derives its name from the French word
09:10:50 2 vua-deer. But we're not in Paris today. We're in Texas. And
09:10:52 3 so we're going to call it voir dire, because it seems to roll
09:10:56 4 off the tongues of Texans somewhat better than the French does.

09:11:00 5 I will ask you a number of questions. It is
09:11:03 6 imperative that you listen carefully to the questions I'm about
09:11:06 7 to ask because you may be selected to serve on the jury in this
09:11:10 8 case.

09:11:11 9 After I have finished asking these questions, the
09:11:14 10 lawyers for each side will exercise strikes that they are
09:11:18 11 allotted to exclude certain members of the panel so we end up
09:11:22 12 with eight jurors who will ultimately remain and hear the
09:11:26 13 evidence in this case.

09:11:27 14 The process of voir dire requires the Court and the
09:11:31 15 lawyers for each party to ask potential jurors questions about
09:11:36 16 their backgrounds, knowledge, biases, and prejudices. In the
09:11:41 17 process of doing this, the questions may at times feel
09:11:44 18 intrusive to you. Please understand that it is certainly not
09:11:49 19 the Court's or the parties' intention to intrude on your
09:11:52 20 personal business. However, to ensure that the jury selected
09:11:56 21 for this case has no knowledge of the facts or the parties to
09:12:00 22 this case and holds no biases or prejudices, it is necessary to
09:12:05 23 ask these questions.

09:12:06 24 If at any time you would like to provide your answer
09:12:10 25 to any question privately, please simply indicate that you

09:12:14 1 would like to do so, and I will have you approach the bench and
09:12:18 2 you can answer the questions with only the Court and the
09:12:21 3 lawyers present.

09:12:23 4 When you answer a question, I would appreciate it if
09:12:26 5 you would first state your name and your seat number. That's
09:12:29 6 the seat where you're seated right now, the seat number here in
09:12:33 7 the courtroom, and please use the microphone that will be
09:12:37 8 provided to you by Ms. Miller, so that the court reporter's
09:12:41 9 record will be able to reflect who is answering and what your
09:12:45 10 answer is.

09:12:49 11 Now, Mr. Deats, will you please stand.

09:12:54 12 MR. DEATS: (Complies)

09:12:54 13 THE COURT: The person standing is Mr. Craig Deats
09:12:57 14 from the Law Office of Deats, Durst, Owen & Levy PLLC, and he
09:13:02 15 represents the plaintiffs in this case, Mike Benavides, and
09:13:05 16 others.

09:13:10 17 Mr. Deats, will you please name the named plaintiffs
09:13:12 18 in this lawsuit for the jury.

09:13:14 19 MR. DEATS: Your Honor, that's a tall order. There
09:13:16 20 are a number of them.

09:13:20 21 THE COURT: And while he is organizing, listen
09:13:23 22 carefully to these names, ladies and gentlemen, because at this
09:13:27 23 stage there will be numerous names read to you. And I will
09:13:30 24 then ask you if you know any of these people. And that's an
09:13:35 25 important point. Mr. Deats?

09:13:36 1 MR. DEATS: Yes, sir. The plaintiffs in this case
09:13:38 2 are the following: Mike Benavides, Victoria Branning, Walter
09:13:43 3 Branning, Kurtis Brown, Thomas Bryan, Pete DiDonato, Susan
09:13:51 4 Erwin, Bryan Fitzpatrick, Cathy Gerac, Carol Pierce, Corey
09:14:01 5 Ricketson, Temple Thomas, Gary Wadham, Greg Weller,
09:14:10 6 Dani Winkler, Michael Wright, Glenn Anderson, Paul Alvarez,
09:14:18 7 Janelle Boone, Michael Broadwater, Johnnie Hall, Edward Johns,
09:14:25 8 Michael *[sic]* Karonika, David Lindsley, Jason Martin,
09:14:33 9 Glenn Wosky, Amelia Zapata.

09:14:37 10 THE COURT: Ladies and gentlemen of the jury panel,
09:14:41 11 do any of you know personally any of the people who were just
09:14:45 12 named by Mr. Deats

09:14:46 13 (No response)

09:14:47 14 THE COURT: All right. Now, Mr. Deats, you're not
09:14:50 15 through yet. Would you please introduce any cocounsel, legal
09:14:55 16 assistants, or others who will be seated with you at the
09:14:58 17 counsel table during this trial.

09:14:59 18 MR. DEATS: Yes, sir. Working with me during this
09:15:01 19 trial will be another attorney in my law firm,
09:15:03 20 Manuel Quinto-Pozos, and our legal assistant Alexandra
09:15:09 21 Kaufman. She goes by Alex.

09:15:11 22 THE COURT: And would you please read to the members
09:15:13 23 of the panel the witnesses whom you expect to call in this
09:15:22 24 case.

09:15:22 25 MR. DEATS: Yes, Your Honor. The anticipated

09:15:24 1 witnesses at this point in time are Victoria Branning,
09:15:28 2 Kurtis Brown, Bryan Fitzgerald *[sic]*, Michael Wright,
09:15:32 3 David Scott Lindsley, and Bryan Fitzpatrick.

09:15:42 4 THE COURT: All right.

09:15:43 5 Now, members of the panel, do you recognize -- do any
09:15:47 6 of you recognize or any of you or any member known to you of
09:15:50 7 your family familiar with, personally acquainted with, related
09:15:55 8 to, had any business dealings with, or ever been employed by
09:16:02 9 any of the plaintiffs whose names were read to you or their
09:16:05 10 lawyers or legal assistants whose names were read to you and
09:16:08 11 introduced to you or any of the persons whose names Mr. Deats
09:16:12 12 just listed for you as potential witnesses?

09:16:17 13 If so, please raise your hand.

09:16:24 14 (No response)

09:16:25 15 THE COURT: Thank you. Mr. Coppola, would you please
09:16:27 16 stand.

09:16:27 17 MR. COPPOLA: (Complies)

09:16:27 18 THE COURT: The person standing is Mr. Christopher J.
09:16:30 19 Coppola from the City of Austin's legal department. He's an
09:16:33 20 assistant city attorney. And he represents the defendant in
09:16:37 21 this case, the City of Austin. Mr. Coppola, would you please
09:16:43 22 introduce any city representatives, cocounsel, legal
09:16:45 23 assistants, or others who will be seated with you during the
09:16:48 24 course of this trial at the conference table.

09:16:50 25 MR. COPPOLA: From my office, Assistant City Attorney

09:16:53 1 Mishell Kneeland will be another lawyer assisting us with the
09:16:56 2 case. Kathy Curtis is a paralegal from my office. And
09:17:00 3 representing the City in this case is James Shamard, who is an
09:17:05 4 assistant director with the City's EMS Department.

09:17:09 5 THE COURT: And, Mr. Coppola, would you please read
09:17:11 6 to the members of the panel the list of witnesses whom the City
09:17:16 7 expects to call in this case.

09:17:18 8 MR. COPPOLA: The City expects to call James Shamard,
09:17:22 9 Ernie Rodriguez, James Hawley, Dr. Paul Hinchey, Jeff Steele,
09:17:31 10 Pete DiDonato, Karen Dulaney Smith, and Sylvia Flores.

09:17:37 11 THE COURT: Now, members of the jury panel, do any of
09:17:39 12 you recognize or do any of you or any member of your family,
09:17:43 13 known to you, familiar with, personally acquainted with,
09:17:46 14 related to, had any business dealings with, or ever been
09:17:50 15 employed by the City of Austin or its lawyers or legal
09:17:55 16 assistants as introduced and any of the persons whose names
09:17:58 17 Mr. Coppola just listed for you?

09:18:00 18 If so, please raise your hand.

09:18:05 19 JUROR CALERO: My name is Terri Calero, and I was an
09:18:14 20 employee for the City of Austin.

09:18:15 21 THE COURT: All right. And what is your seat
09:18:16 22 number? Sixteen

09:18:17 23 JUROR CALERO: Sixteen, yes.

09:18:18 24 THE COURT: All right. Very good. Is there anything
09:18:20 25 in that relationship or background as a city employee that

09:18:25 1 would affect your ability to reach a fair and impartial verdict
09:18:31 2 in this case?

09:18:34 3 JUROR CALERO: No.

09:18:34 4 THE COURT: All right. You would not be prejudiced
09:18:37 5 for one side or the other because of your employment with the
09:18:39 6 City; is that correct?

09:18:40 7 JUROR CALERO: Yes.

09:18:40 8 THE COURT: And how long ago were you employed by the
09:18:43 9 City.

09:18:43 10 JUROR CALERO: Two years ago.

09:18:44 11 THE COURT: You're going to have to speak into the
09:18:48 12 microphone.

09:18:48 13 JUROR CALERO: I'm sorry. Two years ago.

09:18:49 14 THE COURT: All right. And how long were you
09:18:50 15 employed with the City?

09:18:51 16 JUROR CALERO: Twelve years.

09:18:52 17 THE COURT: All right. And what was your position?

09:18:54 18 JUROR CALERO: I was assistant senior advocate with
09:18:56 19 the Environmental Department.

09:18:57 20 THE COURT: All right. Did you ever work with any of
09:18:59 21 the EMS units for the City or the police department or the fire
09:19:04 22 department?

09:19:04 23 JUROR CALERO: We did volunteer work with them, but
09:19:07 24 we never worked directly with them.

09:19:08 25 THE COURT: All right. Thank you.

09:19:10 1 Anyone else?

09:19:12 2 JUROR TALKINGTON: Scott Talkington, seat 9. My wife

09:19:16 3 is currently a City of Austin employee.

09:19:19 4 THE COURT: All right. And how long has she been

09:19:22 5 employed by the City of Austin?

09:19:24 6 JUROR TALKINGTON: Almost six years, I believe.

09:19:26 7 THE COURT: And in what department does she work?

09:19:28 8 JUROR TALKINGTON: Austin Energy.

09:19:29 9 THE COURT: All right. Has she ever been employed in

09:19:32 10 any of the EMS units of the City of Austin or the police

09:19:36 11 department or the fire department of the City of Austin?

09:19:39 12 JUROR TALKINGTON: No.

09:19:39 13 THE COURT: Was there anything about your wife's

09:19:41 14 employment that would inhibit your ability to reach a fair and

09:19:45 15 impartial decision in this case?

09:19:47 16 JUROR TALKINGTON: No.

09:19:48 17 THE COURT: You would not be prejudiced for or

09:19:50 18 against the City because your wife works for them; is that

09:19:53 19 correct?

09:19:54 20 JUROR TALKINGTON: Correct.

09:19:54 21 THE COURT: Thank you.

09:19:55 22 Anyone else?

09:19:56 23 (No response)

09:19:57 24 THE COURT: To the best of your knowledge, ladies and

09:20:02 25 gentlemen, have any of the attorneys in this case or members of

09:20:06 1 their firms acted as your attorney or the attorney for any of
09:20:09 2 your immediate family or close friends?

09:20:11 3 (No response)

09:20:19 4 THE COURT: Now, this is an interesting question, but
09:20:21 5 one I must ask. Do any of you recognize any other member of
09:20:23 6 the panel as being a close personal friend, acquaintance, or
09:20:27 7 business associate? Now, you laugh because I've just told you
09:20:30 8 we've drawn you from 17 counties spread out from all over
09:20:34 9 central Texas, and computer has randomly selected you. But I
09:20:38 10 asked that question one day, and there were two fellows who had
09:20:41 11 played golf in the same foursome every Saturday for about 20
09:20:45 12 years. So it does happen. But do any of you recognize one
09:20:48 13 another or know anybody?

09:20:49 14 Yes, ma'am?

09:20:50 15 JUROR SCHELL: I have really good friend of the
09:20:54 16 family whose name is Margil Quijano.

09:20:59 17 THE COURT: And which juror was that?

09:21:00 18 JUROR SCHELL: I'm six. What number are you, Margil?

09:21:09 19 JUROR QUIJANO: Yes. My name Margil Quijano. I'm
09:21:11 20 number 11. And Alma and myself are very good friends since so
09:21:17 21 many years.

09:21:18 22 THE COURT: All right. Thank you. I got one more
09:21:21 23 hand. And I hope this comes up to an even number, and one of
09:21:24 24 you is not hiding what you know about the other.

09:21:27 25 JUROR COCHRAN: Denise Cochran, seat number 13. Seat

09:21:32 1 number 25 and I teach at the same district, actually, the same
09:21:36 2 subject.

09:21:36 3 THE COURT: All right. Very good.

09:21:38 4 JUROR ONTIBEROS: Seat number 14,

09:21:43 5 Esperanza Ontiberos. I've been best friends with Andrea Petit
09:21:45 6 for about 15 years.

09:21:51 7 THE COURT: The computer shot with a very narrow view
09:21:54 8 of this jury, I think.

09:21:56 9 JUROR POPOV: Seat number 25. I just also wanted to
09:22:00 10 say I know Denise Cochran. I've known her since I was about 18
09:22:06 11 years old.

09:22:06 12 THE COURT: All right. What else?

09:22:08 13 (No response)

09:22:08 14 THE COURT: Of that large number of you who know one
09:22:13 15 another, is there anything in that knowledge or relationship
09:22:16 16 that would cause you not to exercise independent -- judgment in
09:22:21 17 your own independent verdict? In other words, would you be
09:22:25 18 swayed if you and someone known to you appeared on the same
09:22:29 19 jury and have a tendency to be influenced by that juror any
09:22:35 20 more than any others? If so, please raise your hand.

09:22:41 21 (No response)

09:22:41 22 THE COURT: By your silence and lack of hand raising,
09:22:44 23 I presume that you will be able to listen to the evidence
09:22:46 24 yourself and reach your own independent judgment as to what you
09:22:49 25 think your verdict should be. Is there anyone who disagrees

09:22:52 1 with that?

09:22:55 2 (No response)

09:22:56 3 THE COURT: Thank you.

09:22:57 4 Do any of you -- pardon me. The attorneys in
09:23:05 5 consultation with the Court in this case, and has been told you
09:23:08 6 by the district clerk, estimate that this case will take
09:23:12 7 approximately six days to try. Now, let me explain to you what
09:23:19 8 that means. We're selecting you this morning. The evidence
09:23:22 9 will start this afternoon. We will hear evidence, we
09:23:25 10 anticipate and we estimate, for the remainder of the week.

09:23:30 11 Now, to make it easier on you and because the Court
09:23:34 12 has a lot of things going on, you might gather that we have
09:23:38 13 very large dockets arising from all of those counties I
09:23:41 14 mentioned. We will recess at noon on Friday regardless of
09:23:46 15 where we are in the trial. So you'll have Friday afternoon off
09:23:50 16 which will give you an opportunity to deal with personal
09:23:53 17 affairs and business situations. And then Monday is a federal
09:23:58 18 holiday, so we will go until noon on Friday and then recess
09:24:03 19 until Tuesday morning, and it is anticipated by the lawyers and
09:24:08 20 me that we will finish up Tuesday.

09:24:13 21 Now, is there anyone who would suffer any undue
09:24:17 22 hardship or have any special problem serving on a jury for that
09:24:22 23 length of time? The operative words are "undue" and "special,"
09:24:26 24 because I know that you make a sacrifice by being here this
09:24:35 25 week and it creates a hardship and problems for you, but I

09:24:38 1 think with the little break for the long weekend, you should
09:24:40 2 have some time to deal with what you're doing personally.
09:24:43 3 But if there is anyone that would have a hard --
09:24:46 4 undue hardship or a special problem serving during that period
09:24:52 5 of time, please raise your hand.

09:24:53 6 (No response)

09:24:54 7 THE COURT: Thank you. Do any of you have any
09:24:56 8 illness in your family or any business problem or similar
09:24:59 9 personal concern that would make it difficult for you to be
09:25:03 10 attentive to the evidence? In other words, would you be
09:25:07 11 preoccupied with something else and be unable to devote your
09:25:15 12 attention to what goes on here in this courtroom over the time
09:25:18 13 period that I described for you?

09:25:20 14 (No response)

09:25:21 15 THE COURT: Thank you. Do any of you have any
09:25:23 16 problem with your eyesight or your hearing or any other
09:25:25 17 physical disability which in any manner would prevent you from
09:25:28 18 either seeing or hearing the evidence presented in the trial,
09:25:31 19 knowing that the eight of you who are selected for the jury
09:25:34 20 will be seated here to my left in the jury box, so you will be
09:25:37 21 closer. And also it's generally only the judge that gets
09:25:41 22 accused of not being able to see or hear what's going on in the
09:25:44 23 courtroom.

09:25:46 24 But if any of you would have a problem -- physical
09:25:49 25 problem with seeing or hearing the evidence, please raise your

09:25:51 1 hand.

09:25:52 2 (No response)

09:25:53 3 THE COURT: Thank you. Now, what I'm going to share
09:25:56 4 with you now are the statements of the claims by the parties,
09:26:00 5 and these are what the parties claim. This is not the Court's
09:26:06 6 instruction to you on what the evidence shows. I'm first going
09:26:10 7 to tell you what the plaintiffs claim in this case, and then
09:26:13 8 I'm going to tell you what the defendant claims in this case.

09:26:16 9 At the end of the trial, you will make a decision
09:26:21 10 based on facts as to what claims are valid or not. But I want
09:26:26 11 to acquaint you a little bit with what you're going to be
09:26:29 12 hearing during this trial.

09:26:31 13 According to the plaintiffs, this case arises under
09:26:36 14 the Fair Labor Standards Act, a federal law that generally
09:26:41 15 requires employers to pay their employees overtime pay when
09:26:44 16 they work more than 40 hours a week.

09:26:47 17 The plaintiffs are district commanders of the Austin,
09:26:50 18 Travis County Emergency Medical Service, also known as EMS, who
09:26:55 19 claim the City fails to pay them overtime pay as required by
09:26:59 20 law. Plaintiff claims that the City admits that the plaintiffs
09:27:04 21 work more than 40 hours a week without receiving overtime pay,
09:27:08 22 but the City claims that the employees fall under the executive
09:27:12 23 and administrative exemptions to federal overtime law. The
09:27:17 24 plaintiffs respond that these exemptions do not apply because
09:27:23 25 they are public safety employees whose primary duty is to

09:27:27 1 respond to accidents and other medical emergencies.

09:27:30 2 The plaintiffs claim that they are equipped and on

09:27:32 3 call throughout their work shift to respond to emergencies and

09:27:35 4 that they do so on a daily basis, working alongside the

09:27:40 5 paramedics they supervise. The plaintiffs claim that, under

09:27:44 6 the law, the executive and administrative exemptions

09:27:47 7 specifically do not apply to such first responders regardless

09:27:52 8 of their rank and, thus, the plaintiffs contend they are

09:27:57 9 entitled to overtime pay for hours they work in excess of

09:28:01 10 40 hours a week.

09:28:02 11 Now, the City claims as follows. This is how the

09:28:05 12 City responds. The City claims that the plaintiffs are EMS

09:28:09 13 district commander and operations supervisors. They're chiefly

09:28:15 14 responsible for supervising and managing the more than 300

09:28:19 15 EMTs, paramedics, clinical specialists, and captains who

09:28:24 16 perform the vast bulk of the emergency response service

09:28:28 17 provided by EMS. The City claims that these individuals also

09:28:33 18 perform administrative tasks that are vital to EMS operations.

09:28:38 19 These district commanders are part of EMS's command

09:28:41 20 structure, have substantial discretion in supervising their

09:28:46 21 employees and managing their workload, are paid commensurate

09:28:50 22 with important command level roles, are relatively free from

09:28:54 23 direct supervision, and provide direct patient care only

09:29:01 24 rarely.

09:29:01 25 The City claims that the plaintiffs now ask that

09:29:03 1 their management and administrative roles be downplayed and
09:29:07 2 that they be treated as if they are essentially on the front
09:29:11 3 lines of EMS patient care. The City claims that the City has
09:29:16 4 correctly classified these district commanders as exempt from
09:29:19 5 overtime because of the roles they play in the EMS
09:29:23 6 organization.

09:29:25 7 Now, that is what the parties claim. Do any of you,
09:29:32 8 or do you know of anyone directly, who has an interest in the
09:29:36 9 outcome of this litigation based on that brief thumbnail sketch
09:29:40 10 of what I told you were the claims of the parties?

09:29:43 11 (No response)

09:29:45 12 THE COURT: Later today the lawyers will give their
09:29:51 13 opening statement, which are more detailed renditions of the
09:29:54 14 understanding of the facts involved in this case. But based
09:29:57 15 upon that short summary, which I just provided to you, I want
09:30:00 16 to ask you a few questions concerning any knowledge you may
09:30:04 17 have about this case. Have any of you read anything about this
09:30:09 18 case in the newspapers, or have ever heard anything about it on
09:30:13 19 radio or in conversations with others or seen anything on
09:30:17 20 television about it? Or have you learned, heard, read or seen
09:30:22 21 anything about it from any source whatsoever other than in this
09:30:26 22 courtroom or in connection with your initial qualification and
09:30:30 23 orientation for jury service by Ms. Demmings? If so, please
09:30:34 24 raise your hand.

09:30:35 25 (No response)

09:30:37 1 THE COURT: Now, a few questions about your prior
09:30:48 2 experience in Court: Is there anyone on this panel who has
09:30:50 3 ever served on a grand jury? If so, please raise your hand.
09:30:54 4 (No response)

09:30:55 5 THE COURT: Is there anyone on the panel who has ever
09:30:59 6 served on what we call a regular or petit jury? That's a jury
09:31:03 7 like the one you've been called here today that considers one
09:31:07 8 case and one case only, and that can be either civil or
09:31:12 9 criminal, and it can be in either federal court or state
09:31:14 10 court. So is there anyone on this panel who has ever served on
09:31:17 11 a jury before? If so, please raise your hand.

09:31:25 12 JUROR FERGUSON: Mark Ferguson, seat seven.

09:31:28 13 THE COURT: And was your prior juror jury service in
09:31:30 14 federal or state court?

09:31:31 15 JUROR FERGUSON: I think it was state court.

09:31:33 16 THE COURT: And how many times have you served on a
09:31:36 17 jury?

09:31:36 18 JUROR FERGUSON: One time.

09:31:37 19 THE COURT: All right. And was the case civil or
09:31:39 20 criminal.

09:31:39 21 JUROR FERGUSON: It was criminal.

09:31:41 22 THE COURT: And about how long ago was that?

09:31:43 23 JUROR FERGUSON: It was about six or seven years ago.

09:31:50 24 THE COURT: Were you the foreman of that jury?

09:31:52 25 JUROR FERGUSON: No, sir.

09:31:52 1 THE COURT: And without disclosing what the outcome
09:31:54 2 of the trial was or what the jury's verdict was, did the jury
09:31:59 3 deliberate and arrive at a verdict in this case?

09:32:02 4 JUROR FERGUSON: Yes, sir, they did.

09:32:03 5 THE COURT: And is there anything about that prior
09:32:05 6 jury experience that would prevent you from being a fair and
09:32:08 7 impartial juror in this case?

09:32:10 8 JUROR FERGUSON: No, sir.

09:32:11 9 THE COURT: Thank you. Anyone else in the first row
09:32:13 10 here?

09:32:15 11 (No response)

09:32:15 12 THE COURT: All right. Second row to my right, raise
09:32:16 13 your hand.

09:32:17 14 JUROR EMERSON: Yes, sir. Bob Emerson.

09:32:22 15 THE COURT: All right. Mr. Emerson, was your prior
09:32:26 16 jury service federal or state?

09:32:28 17 JUROR EMERSON: It was civil.

09:32:29 18 THE COURT: Was it federal court or was it state?

09:32:30 19 JUROR EMERSON: Oh. State. I'm sorry.

09:32:32 20 THE COURT: All right. And about how long ago was
09:32:34 21 that?

09:32:34 22 JUROR EMERSON: About 15 years ago.

09:32:35 23 THE COURT: And have you served on a jury more than
09:32:38 24 once?

09:32:38 25 JUROR EMERSON: Yes, sir.

09:32:38 1 THE COURT: How many times have you served on a jury?

09:32:42 2 JUROR EMERSON: Three times. One in grand jury one

09:32:45 3 time in Lampasas County.

09:32:47 4 THE COURT: All right. Were the -- disregarding the

09:32:51 5 grand jury experience, were the civil juries -- or were the

09:32:54 6 cases you served on both civil juries?

09:32:57 7 JUROR EMERSON: Yes, sir.

09:32:57 8 THE COURT: All right. And were you the foreman of

09:33:00 9 either of those juries.

09:33:02 10 JUROR EMERSON: No, sir.

09:33:02 11 THE COURT: And, again, without disclosing the

09:33:04 12 outcome in both of those cases, did the jury deliberate and

09:33:08 13 arrive at a verdict?

09:33:09 14 JUROR EMERSON: Yes, sir.

09:33:10 15 THE COURT: And you have the one time you served on a

09:33:13 16 grand jury; is that correct?

09:33:14 17 JUROR EMERSON: Right.

09:33:15 18 THE COURT: Is there anything in any of that prior

09:33:18 19 jury, regular juries or grand juries, anything in your

09:33:22 20 experience that would prevent you from being a fair and

09:33:25 21 impartial juror in this case if selected for this jury?

09:33:28 22 JUROR EMERSON: No.

09:33:29 23 THE COURT: Thank you.

09:33:32 24 JUROR NEFF: Brad Neff, seat 17.

09:33:37 25 THE COURT: All right. And Mr. Neff, how many times

09:33:39 1 have you served on a jury?

09:33:41 2 JUROR NEFF: One time.

09:33:42 3 THE COURT: How long ago was that?

09:33:43 4 JUROR NEFF: About seven years ago.

09:33:44 5 THE COURT: Was it federal or state?

09:33:46 6 JUROR NEFF: I believe it was state.

09:33:47 7 THE COURT: All right. And was it a civil case or a

09:33:49 8 criminal case?

09:33:50 9 JUROR NEFF: Civil.

09:33:50 10 THE COURT: Were you the foreman?

09:33:52 11 JUROR NEFF: No, sir.

09:33:52 12 THE COURT: And did the jury deliberate and arrive at

09:33:55 13 a verdict?

09:33:56 14 JUROR NEFF: We did not.

09:33:57 15 THE COURT: Is there anything in that prior jury

09:33:59 16 experience that would prevent you from being fair and impartial

09:34:02 17 in this case if selected for this jury?

09:34:05 18 JUROR NEFF: No, sir.

09:34:06 19 THE COURT: Thank you. Anyone to my right with prior

09:34:09 20 jury experience?

09:34:10 21 (No response)

09:34:10 22 THE COURT: Now moving to the left.

09:34:15 23 JUROR SPIKES: Brent Spikes, juror number 10.

09:34:17 24 THE COURT: And about how long did you serve on a

09:34:20 25 jury, Mr. Spikes?

09:34:21 1 JUROR SPIKES: About 15 years ago.

09:34:22 2 THE COURT: Have you only served on one, or have you

09:34:25 3 served on more than one?

09:34:25 4 JUROR SPIKES: One.

09:34:26 5 THE COURT: Was it civil or criminal?

09:34:27 6 JUROR SPIKES: Criminal.

09:34:28 7 THE COURT: Was it state or federal court?

09:34:30 8 JUROR SPIKES: State.

09:34:31 9 THE COURT: Were you the foreman of that jury?

09:34:32 10 JUROR SPIKES: Yes, sir.

09:34:33 11 THE COURT: Did the jury deliberate and arrive at a

09:34:36 12 verdict?

09:34:36 13 JUROR SPIKES: Yes, sir.

09:34:37 14 THE COURT: Is there anything in that prior jury

09:34:39 15 experience that would prevent you from being fair and impartial

09:34:42 16 in this case?

09:34:42 17 JUROR SPIKES: No.

09:34:43 18 THE COURT: Thank you.

09:34:46 19 Anyone else to my left?

09:34:48 20 JUROR ONTIBEROS: Esperanza Ontiberos, number 14.

09:34:51 21 THE COURT: Ms. Ontiberos, was your prior jury

09:34:53 22 service federal or state?

09:34:54 23 JUROR ONTIBEROS: State.

09:34:55 24 THE COURT: And how many times have you served on a

09:34:57 25 jury?

09:34:57 1 JUROR ONTIBEROS: Just once.

09:34:59 2 THE COURT: About how long ago was that?

09:35:01 3 JUROR ONTIBEROS: Six months.

09:35:02 4 THE COURT: All right. And did you say two times?

09:35:05 5 JUROR ONTIBEROS: Once.

09:35:06 6 THE COURT: Once. I'm sorry. Was the case civil or

09:35:09 7 criminal?

09:35:09 8 JUROR ONTIBEROS: Civil.

09:35:10 9 THE COURT: Were you the foreman of that jury?

09:35:12 10 JUROR ONTIBEROS: No, sir.

09:35:12 11 THE COURT: Did the jury deliberate and arrive at a

09:35:15 12 verdict?

09:35:15 13 JUROR ONTIBEROS: No, sir.

09:35:16 14 THE COURT: Was there anything about that prior jury

09:35:18 15 experience that would prevent you from being a fair and

09:35:21 16 impartial juror in this case?

09:35:22 17 JUROR ONTIBEROS: No, sir.

09:35:23 18 THE COURT: Thank you. Anyone else with prior jury

09:35:25 19 experience?

09:35:30 20 (No response)

09:35:30 21 THE COURT: Thank you. Now this is addressed to

09:35:32 22 those of you who have served in the military. Have any of you

09:35:36 23 ever served on a general or special courts-martial or

09:35:41 24 court-martial panel or served as a court-martial.

09:35:44 25 (No response)

09:35:44 1 THE COURT: Have you, any member of your family, or
09:35:50 2 any close friend ever participated -- any family member or
09:35:54 3 close friend known to you ever participated in a lawsuit --
09:35:57 4 that would be a civil case -- as a party, a witness, or in any
09:36:02 5 capacity?

09:36:10 6 JUROR KOEHN: Jody Koehn, number 26.

09:36:11 7 THE COURT: In what capacity were you involved in a
09:36:13 8 lawsuit.

09:36:13 9 JUROR KOEHN: I've been a party to a lawsuit, I've
09:36:18 10 represented clients in lawsuits, and I've testified in
09:36:21 11 lawsuits.

09:36:22 12 THE COURT: All right. Is there anything in that
09:36:24 13 prior experience that would prevent you from being a fair and
09:36:27 14 impartial juror in this case?

09:36:29 15 JUROR KOEHN: No, sir.

09:36:30 16 THE COURT: All right. Thank you. Anyone else? Any
09:36:32 17 prior experience in a lawsuit?

09:36:33 18 JUROR LAUNIUS: Robert Launius, seat 12.

09:36:42 19 THE COURT: All right. In what capacity were you
09:36:44 20 involved in a lawsuit?

09:36:45 21 JUROR LAUNIUS: I was actually a witness in a state
09:36:48 22 case about three months ago.

09:36:50 23 THE COURT: Okay. Was that a criminal or civil case?

09:36:52 24 JUROR LAUNIUS: That would -- criminal.

09:36:54 25 THE COURT: All right. Is there anything in that

09:36:56 1 prior experience that would prevent you from being fair and
09:36:59 2 impartial in this case if selected to be a juror?

09:37:01 3 JUROR LAUNIUS: No, sir.

09:37:02 4 THE COURT: Thank you.

09:37:04 5 JUROR SPIKES: Brent Spikes, number 10. I was in a
09:37:10 6 civil case. I was a defendant in an auto accident.

09:37:14 7 THE COURT: All right. You were an actual party in
09:37:16 8 the lawsuit?

09:37:17 9 JUROR SPIKES: Yes, sir.

09:37:17 10 THE COURT: All right. Is there anything in that
09:37:19 11 prior experience that would prevent you from being a fair and
09:37:22 12 impartial juror in this case?

09:37:23 13 JUROR SPIKES: No, sir.

09:37:24 14 THE COURT: All right. Thank you. Anyone else to my
09:37:27 15 left?

09:37:27 16 (No response)

09:37:27 17 THE COURT: Now to my right?

09:37:29 18 JUROR PRYOR: Mark Pryor, number 23. I used to be a
09:37:33 19 civil attorney, so I represented clients in civil suits.

09:37:36 20 THE COURT: All right. So you were involved in any
09:37:38 21 number of civil suits?

09:37:39 22 JUROR PRYOR: Yes, Judge.

09:37:40 23 THE COURT: All right. Is there anything in that
09:37:42 24 prior experience that would prevent you from being fair and
09:37:45 25 impartial in this case?

09:37:46 1 JUROR PRYOR: No, sir.

09:37:47 2 THE COURT: Thank you. Anyone else to my right?

09:37:50 3 JUROR SHELDON: Tonya Sheldon, number 24. I'm a

09:37:53 4 defendant in a lawsuit.

09:37:54 5 THE COURT: All right. What type of suit is that?

09:37:56 6 JUROR SHELDON: A civil suit.

09:37:57 7 THE COURT: All right. Is there anything in that

09:37:59 8 experience that would prevent you from being fair and impartial

09:38:02 9 in this case?

09:38:03 10 JUROR SHELDON: No, sir.

09:38:03 11 THE COURT: Thank you.

09:38:04 12 JUROR WALKER: My name is Charles Walker, number 21.

09:38:12 13 THE COURT: All right. In what capacity have you

09:38:13 14 been involved in a suit?

09:38:15 15 JUROR WALKER: My son is a attorney in California.

09:38:19 16 THE COURT: So does he sue you a lot, or are you just

09:38:21 17 aware of what goes on?

09:38:23 18 JUROR WALKER: No.

09:38:23 19 THE COURT: Okay. Is there anything in your

09:38:25 20 experience or anything your son may have told you or anything

09:38:29 21 in your background that would prevent you from being fair and

09:38:32 22 impartial in this case?

09:38:33 23 JUROR WALKER: No, sir.

09:38:34 24 THE COURT: Thank you. I think there was somebody

09:38:37 25 else down over here. Oh, yes. Several.

09:38:39 1 JUROR ASHBROOK: I was involved in a small claims
09:38:45 2 court. I took a company to court because they took a truck
09:38:47 3 through my front yard. They wouldn't come back and fix my
09:38:51 4 front yard. And I took them to court. Oh, Shirley Jean
09:38:56 5 Ashbrook, seat one. Sorry.

09:38:58 6 THE COURT: Anything else you want to add to that?

09:39:00 7 JUROR ASHBROOK: I'm sorry?

09:39:01 8 THE COURT: Is there anything else you wanted to add?

09:39:04 9 JUROR ASHBROOK: No. That's it.

09:39:05 10 THE COURT: All right. Is there anything in that
09:39:06 11 prior experience with the Court system or being a party to
09:39:09 12 litigation that would prevent you from being a fair and
09:39:11 13 impartial juror in this? Case.

09:39:12 14 JUROR ASHBROOK: No, sir.

09:39:13 15 THE COURT: Thank you.

09:39:15 16 JUROR MATIC: Milan Matic, number two. I was a
09:39:22 17 plaintiff about 15 years ago in a civil suit.

09:39:28 18 THE COURT: Is there anything in that experience or
09:39:30 19 any of the background involving that suit that would prevent
09:39:32 20 you from being fair and impartial in this case.

09:39:35 21 JUROR MATIC: No, sir.

09:39:36 22 THE COURT: Thank you.

09:39:46 23 JUROR JAMES: Warren James, number 19.

09:39:49 24 THE COURT: Mr. James, in what capacity have you been
09:39:49 25 involved in prior litigation?

09:39:49 1 JUROR JAMES: A civil lawsuit 20 years ago. I was a
09:39:53 2 plaintiff.

09:39:53 3 THE COURT: All right. Is there anything in that
09:39:54 4 prior experience that would prevent you from being a fair and
09:39:57 5 impartial juror in this case?

09:39:58 6 JUROR JAMES: No. And I was also in a criminal
09:40:04 7 federal case, too. I was a witness.

09:40:06 8 THE COURT: As a witness? That's good. Better to be
09:40:09 9 a witness than it is to be a defendant in a federal criminal
09:40:12 10 charge.

09:40:13 11 Is there anything in that experience that would
09:40:14 12 prevent you being fair and impartial if chosen to be a juror in
09:40:19 13 this case?

09:40:19 14 JUROR JAMES: No, sir.

09:40:20 15 THE COURT: Thank you.

09:40:21 16 JUROR SCHELL: Alma Schell, seat six. And a
09:40:25 17 defendant in a civil case. Nothing should impede me.

09:40:27 18 THE COURT: All right. You would be able to listen
09:40:29 19 to the evidence here in this courtroom and only consider it and
09:40:33 20 my instructions in reaching your verdict; is that correct?

09:40:36 21 JUROR SCHELL: Yes.

09:40:37 22 THE COURT: Thank you.

09:40:37 23 JUROR POPOV: I'm Allison Popov, seat 25. I heard
09:40:45 24 small claims court, and I didn't even think about it. But 20
09:40:48 25 years ago I was involved in a small claims court case.

09:40:52 1 THE COURT: Easy to forget small claims court after
09:40:55 2 20 years. Anything in that experience that would prevent you
09:40:57 3 from being fair and impartial in this case?

09:40:59 4 JUROR POPOV: No, sir.

09:41:00 5 THE COURT: And were you a plaintiff or defendant in
09:41:01 6 small claims court?

09:41:02 7 JUROR POPOV: I took someone to court.

09:41:03 8 THE COURT: All right. Thank you. Anyone else?
09:41:05 9 Anyone else ever been involved in a lawsuit before?

09:41:08 10 Now, other than that has already been stated by
09:41:11 11 several of you, is there anyone who has ever been a witness in
09:41:15 12 a criminal case? Anyone else?

09:41:18 13 THE COURT: Yes, ma'am..

09:41:19 14 JUROR KOEHN: I'm Jody Koehn, seat 26. Several.

09:41:24 15 THE COURT: All right. Is there a -- and in what
09:41:28 16 capacity were you a witness? You've been involved in lot of
09:41:32 17 crimes?

09:41:32 18 JUROR KOEHN: Well, no, sir. I used to be an
09:41:35 19 assistant district attorney, and I've also been a defense
09:41:38 20 attorney. And occasionally there was some type of procedural
09:41:42 21 reason or legal opinion that was needed. And then I think I
09:41:47 22 testified one time in federal court.

09:41:55 23 THE COURT: All right. Is there anything in that
09:41:56 24 experience with the Court system that would prevent you from
09:41:59 25 being fair and impartial if selected in this case?

09:42:01 1 JUROR KOEHN: No, sir.

09:42:01 2 THE COURT: All right. Thank you.

09:42:03 3 Anyone on the left?

09:42:05 4 (No response)

09:42:05 5 All right. Over on the right here?

09:42:10 6 JUROR JAMES: Warren James, 19. It's the same case I

09:42:12 7 talked about before.

09:42:13 8 THE COURT: All right. That's fine. Thank you.

09:42:16 9 Anyone else.

09:42:17 10 (No response)

09:42:20 11 THE COURT: All right. I've kind of gotten a preview

09:42:22 12 to some of you are going to say in response to this question:

09:42:26 13 Have any of you attended law school or had any special training

09:42:29 14 in the law or worked in a law library, a law school, a lawyer's

09:42:33 15 office, a court or any other business related to the law?

09:42:36 16 Please raise your hand.

09:42:39 17 JUROR SHELDON: Tonya Sheldon, number 24. I am chief

09:42:44 18 clerk for the Justice Court, Precinct 1 and 2 of Coryell

09:42:49 19 County. I am a civil clerk.

09:42:50 20 THE COURT: Would such experience prevent you from

09:42:53 21 following my instructions in this case even though you might

09:42:56 22 disagree with those instructions?

09:42:57 23 JUROR SHELDON: No.

09:42:58 24 THE COURT: All right. And would the experience

09:43:00 25 prevent you from being fair and impartial?

09:43:02 1 JUROR SHELDON: Not that experience.

09:43:04 2 THE COURT: And would there be anything in your

09:43:06 3 experience with the legal profession or your employment that

09:43:10 4 would prevent you from rendering a verdict based solely on the

09:43:13 5 evidence presented here in this courtroom and the instructions

09:43:16 6 that I give you?

09:43:17 7 JUROR SHELDON: No, sir.

09:43:18 8 THE COURT: Thank you.

09:43:21 9 JUROR PRYOR: Mike Pryor. I'm 23.

09:43:24 10 THE COURT: All right. And what is your experience

09:43:27 11 with the law?

09:43:28 12 JUROR PRYOR: I went to law school and then was a

09:43:34 13 civil attorney for about five years. I'm currently an

09:43:36 14 assistant district attorney for Travis County.

09:43:40 15 THE COURT: All right. Is there anything in that

09:43:41 16 experience that would prevent you from following my

09:43:43 17 instructions on the law in this case even if your personal

09:43:46 18 experience might lead you to disagree with those instructions?

09:43:49 19 JUROR PRYOR: No, sir.

09:43:50 20 THE COURT: That's one of the few things I get to

09:43:53 21 do. I get to tell you what the law is, and you have to keep

09:43:56 22 up with it. Would that experience prevent you from being fair

09:43:59 23 and impartial in this case?

09:44:01 24 JUROR PRYOR: No, sir.

09:44:01 25 THE COURT: And would it prevent you from rendering a

09:44:04 1 verdict based solely on the evidence presented here in the
09:44:07 2 courtroom and the instructions I give you?

09:44:08 3 JUROR PRYOR: No, sir.

09:44:09 4 THE COURT: And the meaning for all of you of that
09:44:12 5 question is whether you can keep an open mind and base your
09:44:15 6 verdict at the end of the trial only on what you hear in the
09:44:17 7 courtroom.

09:44:18 8 Anyone else to my right? Thank you.

09:44:20 9 JUROR ROWE: Angela Rowe, number -- seat five. I'm a
09:44:26 10 paralegal. I used to work at a law firm.

09:44:28 11 THE COURT: All right. And what law firm was that?

09:44:31 12 JUROR ROWE: Baker Botts.

09:44:32 13 THE COURT: All right. And is there anything in that
09:44:34 14 experience that would prevent you from following my
09:44:37 15 instructions in this case even if you disagree with them based
09:44:40 16 on what you have heard in your employment?

09:44:42 17 JUROR ROWE: No.

09:44:42 18 THE COURT: And is there anything in your prior
09:44:45 19 experience that would prevent you from being fair and impartial
09:44:48 20 in this case to these parties?

09:44:50 21 JUROR ROWE: No.

09:44:50 22 THE COURT: And would your experience prevent you
09:44:53 23 from rendering a verdict based solely on the evidence presented
09:44:57 24 in the courtroom and any instructions that I give you?

09:44:59 25 JUROR ROWE: No.

09:44:59 1 THE COURT: Thank you.

09:45:01 2 Anyone else to my right?

09:45:05 3 (No response)

09:45:05 4 THE COURT: Now to the left.

09:45:06 5 JUROR KOEHN: Jody Koehn, seat 26. I've been

09:45:11 6 licensed to practice law since 1980. I've served as an

09:45:16 7 assistant district attorney in two counties. I've been in

09:45:17 8 private practice two or three times. I've also been employed

09:45:20 9 with the Attorney General's Office in the Child Support

09:45:23 10 Enforcement Division and also the Prosecutor's Assistants

09:45:27 11 Division, where I was assigned to the U.S. District Court in

09:45:29 12 Texarkana doing drug cases. And I'm currently a hearing

09:45:34 13 officer for the Texas Workforce Commission, so I conduct

09:45:37 14 telephone appeals for unemployment cases.

09:45:39 15 THE COURT: All right. Now, is there -- would that

09:45:42 16 experience in any way prevent you from following my

09:45:45 17 instructions on the law in this case even if you disagree with

09:45:47 18 them?

09:45:48 19 JUROR KOEHN: No, sir.

09:45:48 20 THE COURT: And would the experience prevent you from

09:45:51 21 being a fair and impartial juror in this case?

09:45:54 22 JUROR KOEHN: No, sir.

09:45:54 23 THE COURT: And would you be able to set aside your

09:45:57 24 past experiences and render a verdict based solely on the

09:46:00 25 evidence you heard in the courtroom and the instructions on the

09:46:03 1 law that I give you?

09:46:04 2 JUROR KOEHN: Absolutely.

09:46:05 3 THE COURT: Thank you. Anyone else to my left?

09:46:12 4 JUROR CALERO: Maria Calero, seat 16. I'm originally
09:46:18 5 from El Paso, Texas, and I've worked with the El Paso Legal
09:46:21 6 Assistant for seven years and I was legal secretary there.

09:46:23 7 THE COURT: Is there anything in that experience that
09:46:25 8 would prevent you from following my instructions in this case
09:46:28 9 even if you disagreed with them?

09:46:29 10 JUROR CALERO: No. I will be okay.

09:46:32 11 THE COURT: And would your experience prevent you
09:46:34 12 from being fair and impartial if selected as a juror in this
09:46:37 13 case.

09:46:38 14 JUROR CALERO: No, sir.

09:46:39 15 THE COURT: And could you render a verdict based
09:46:41 16 solely on the evidence presented in this courtroom and the
09:46:44 17 instructions I give you regardless of your background and
09:46:48 18 knowledge of the law that you may have acquired from your
09:46:51 19 employment?

09:46:52 20 JUROR CALERO: Yes, sir.

09:46:52 21 THE COURT: Thank you. Anyone else with legal
09:46:55 22 training of any kind?

09:46:56 23 (No response)

09:46:57 24 THE COURT: Are any of you a member of any
09:47:02 25 organization that pertains to the justice system or the reform

09:47:07 1 or modification of the justice system? Do any of you work with
09:47:12 2 any groups, any charitable groups, do any volunteer work with
09:47:17 3 any of the wide myriad of organizations who seek changes in the
09:47:22 4 justice system or to reform the justice system? If so, please
09:47:25 5 raise your hand.

09:47:29 6 JUROR CALERO: Maria Calero, 16. I work for Life
09:47:33 7 Steps, and it's -- we do classes for DWI and repeat offenders
09:47:39 8 and families in transition, families with problems in reference
09:47:43 9 to visitations and exchanges to benefit the children. I'm a
09:47:49 10 visit coordinator and also a class coordinator.

09:47:52 11 THE COURT: All right. Is there anything in that
09:47:53 12 experience that would prevent you from following my
09:47:57 13 instructions on the law in this case?

09:47:58 14 JUROR CALERO: No, sir.

09:47:59 15 THE COURT: Or would it prevent you from being a fair
09:48:02 16 and impartial juror if selected in this particular case.

09:48:04 17 JUROR CALERO: No, sir.

09:48:05 18 THE COURT: And would it prevent you from rendering a
09:48:07 19 verdict based solely on the evidence presented in the courtroom
09:48:10 20 and the instructions that I give you?

09:48:12 21 JUROR CALERO: No, sir.

09:48:16 22 THE COURT: Thank you. Anyone else?

09:48:23 23 JUROR NEFF: Brad Neff, 17. Probably doesn't
09:48:27 24 pertain, but my wife works for CASA of Travis County.

09:48:31 25 THE COURT: All right. Anything in that experience

09:48:33 1 of yours and your knowledge of what your wife does that would
09:48:36 2 prevent you from following my instructions in this case?

09:48:39 3 JUROR NEFF: No, sir.

09:48:40 4 THE COURT: And would it prevent you from being a
09:48:42 5 fair and impartial juror in this case?

09:48:44 6 JUROR NEFF: No, sir.

09:48:45 7 THE COURT: And would it prevent you from rendering a
09:48:47 8 verdict based solely on the evidence presented in the courtroom
09:48:49 9 and the instructions that I give you?

09:48:50 10 JUROR NEFF: No, sir.

09:48:51 11 THE COURT: Thank you. Anyone else?

09:48:53 12 (No response)

09:48:56 13 THE COURT: Now, members of the panel who have served
09:48:58 14 on juries before are already aware that, once selected as a
09:49:02 15 juror, you become the judge of the facts in this case, the
09:49:07 16 judge of the credibility of the witnesses, and the judge of the
09:49:11 17 weight to be given the testimony of the witnesses.

09:49:17 18 It is your prerogative as a juror to believe all of
09:49:21 19 the testimony of a witness or only a part of a witness's
09:49:23 20 testimony or you may totally disbelieve a witness's testimony.
09:49:28 21 This is completely up to you. As jurors you are the exclusive
09:49:33 22 judges of the facts, the credibility of the witnesses, and the
09:49:37 23 weight to be given the witness's testimony.

09:49:41 24 Now, whereas the jury is the exclusive judge of
09:49:44 25 facts, the Court, which is represented by me, is the sole judge

09:49:52 1 of the law applicable in this case. At the conclusion of all
09:49:55 2 of the testimony and after the lawyers for both sides have
09:49:58 3 presented their summary of the case to you and their closing
09:50:04 4 arguments, the Court will explain the law controlling the
09:50:07 5 issues involved in this lawsuit.

09:50:09 6 You are to be governed by the Court's explanation of
09:50:12 7 the applicable law which will be set out in what is termed the
09:50:16 8 Court's Instructions and Charge. If you are selected to sit as
09:50:21 9 a juror in this case, will you be able and willing to render a
09:50:26 10 verdict based solely on the evidence presented at the trial and
09:50:29 11 the law as I give it to you in my instructions, disregarding
09:50:35 12 any other ideas, notions, or beliefs about the law you may have
09:50:40 13 encountered in reaching your verdict?

09:50:42 14 If you are unable or unwilling to render a verdict
09:50:47 15 based solely on the evidence presented at the trial and the law
09:50:49 16 as I give it to you in my instructions, please raise your hand
09:50:52 17 at this time.

09:50:59 18 JUROR SHELDON: I feel like I might be impartial
09:51:01 19 here. My husband was a sheriff's deputy for Coryell County for
09:51:06 20 many years and worked on-call hours and was never compensated
09:51:10 21 for that. We did contact TMPA about a possible lawsuit about
09:51:12 22 twelve years ago. We were told there was no reasonable --
09:51:15 23 there was no way we could win a lawsuit for that. I don't know
09:51:18 24 if that -- I mean, that may make me impartial. I don't know.

09:51:24 25 THE COURT: All right. Thank you. Anyone else?

09:51:31 1 JUROR SCHELL: One of my best friends, actually, we
09:51:36 2 were talking and she actually works in the medical field. She
09:51:42 3 is actually a supervisor. She oversees a department that
09:51:47 4 people who actually work within in the health care. She
09:51:51 5 oversees it. Every once in a while she has to step in. She is
09:51:54 6 a salaried employee, and we do discuss her having to work
09:51:58 7 overtime and not being compensated because she's a salaried
09:52:01 8 employee. So I think I would be actually impartial. I really
09:52:08 9 do feel I would be, as we've been talking.

09:52:10 10 THE COURT: All right. Thank you.

09:52:11 11 JUROR SCHELL: My name is Alma Schell, and I am seat
09:52:16 12 six.

09:52:17 13 JUROR PARSLEY: Sorry, Judge -- I'm Don Parsley,
09:52:21 14 seat 8 -- I hope I'm not out of line with this. But I'm a
09:52:26 15 salaried employee. Always have been. I work 50, 60 hours a
09:52:30 16 week. I always have. And I'm exempt from overtime pay. And I
09:52:34 17 don't have a lot of patience for folks who are opportunistic in
09:52:40 18 rectifying that after they get their positions.

09:52:44 19 THE COURT: All right. Thank you.

09:52:48 20 JUROR NEFF: Brad Neff, 17. This actually pertains
09:52:54 21 back to one of the names on the plaintiffs' side. I don't
09:52:57 22 believe I know this person, but one of the last names sounded
09:53:01 23 vaguely familiar, and I just couldn't quite place it and I
09:53:04 24 still can't. But I just wanted to bring that up.

09:53:07 25 THE COURT: All right. And what name was that?

09:53:09 1 JUROR NEFF: I believe it was one of first ones,
09:53:17 2 Benavides.

09:53:18 3 THE COURT: All right.

09:53:18 4 MR. DEATS: Your Honor, one of the plaintiffs' the
09:53:19 5 first named one, is Mike Benavides.

09:53:22 6 JUROR NEFF: Again, I can't place it, but it just
09:53:25 7 sounds vaguely familiar.

09:53:26 8 THE COURT: All right. That's very good. Thank you
09:53:28 9 for sharing that with us.

09:53:30 10 Anyone else at this point?

09:53:32 11 (No response)

09:53:33 12 THE COURT: All right. Now, this is a civil case.
09:53:38 13 Generally, the plaintiff in a civil case has the burden of
09:53:41 14 proving its claims by what is called a preponderance of the
09:53:45 15 evidence. However, under the Fair Labor Standards Act, once a
09:53:51 16 plaintiff has established a claim for overtime pay, the
09:53:54 17 defendant bears the burden to prove that the plaintiff is not
09:53:58 18 entitled to such pay because the plaintiff performs the type of
09:54:02 19 work that is exempt from federal overtime law.

09:54:05 20 Those of you who have served on criminal juries are
09:54:09 21 familiar with the requirement of proof called beyond a
09:54:12 22 reasonable doubt. Please bear in mind that in civil cases the
09:54:18 23 proof standard is not beyond a reasonable doubt, as in criminal
09:54:25 24 cases, but, rather, the City must prove that the plaintiffs are
09:54:30 25 exempt from federal overtime law by a preponderance of the

09:54:32 1 evidence.

09:54:35 2 This means that the City has to produce evidence
09:54:38 3 which, when considered in the light of all of the facts, leads
09:54:42 4 you to believe that what the City claims is more likely true
09:54:47 5 than not true. "Preponderance of the evidence" has been termed
09:54:53 6 the greater weight of the credible evidence.

09:54:55 7 Is there anyone among you who would be unable to
09:54:59 8 require the City to prove Plaintiffs are exempt from federal
09:55:03 9 overtime law by a preponderance of the evidence as I have just
09:55:07 10 explained it to you?

09:55:09 11 (No response)

09:55:11 12 THE COURT: Is there anyone among you who would hold
09:55:14 13 the City to a greater or lesser standard of proof than a
09:55:19 14 preponderance of the evidence as I have just explained it to
09:55:22 15 you?

09:55:23 16 (No response)

09:55:24 17 THE COURT: Thank you. Now, have you, a member of
09:55:29 18 your family or any close friend known to you ever been employed
09:55:34 19 in a supervisory or managerial position? If so, please raise
09:55:39 20 your hand.

09:55:42 21 All right. And state your name and your seat number
09:55:44 22 and what your position is or was and whether you were
09:55:49 23 self-employed at the time or who your employer was.

09:55:52 24 JUROR MATIC: Milan Matic, seat two. I have been a
09:55:56 25 manager. I worked at an electronics manufacturing facility.

09:56:02 1 My wife has been a supervisor in a cardiac cath lab at a
09:56:07 2 hospital here in town.

09:56:10 3 THE COURT: All right. Thank you. We'll just
09:56:12 4 proceed down the row. Anybody that has had managerial or
09:56:16 5 supervisory positions.

09:56:17 6 JUROR SCHELL: Yes. I was actually a supervisor or
09:56:20 7 manager at The Gap. This was 20 years ago, but I was in
09:56:25 8 management. Thank you.

09:56:26 9 Oh. Alma Schell, seat six.

09:56:29 10 THE COURT: Thank you.

09:56:30 11 JUROR PARSLEY: Don Parsley, seat eight. I'm in the
09:56:34 12 printing business. I've been a manager of exempt and un-exempt
09:56:38 13 employees for 20, 25 years.

09:56:44 14 THE COURT: In the back row to my right.

09:56:46 15 JUROR WALKER: Charles Walker, seat 21. I've been a
09:56:51 16 manager for 31 years when I was self-employed and then with the
09:56:59 17 Lower Colorado Authority and now with National Instruments
09:57:02 18 Corporation.

09:57:05 19 JUROR TALKINGTON: Scott Talkington, seat nine. I'm
09:57:10 20 the owner/operator of a restaurant and manager.

09:57:13 21 THE COURT: All right.

09:57:14 22 JUROR SPIKES: Brent Spikes, number 10. I've been a
09:57:20 23 manager for about 10 years with the State of Texas, exempt and
09:57:26 24 nonexempt employees.

09:57:28 25 THE COURT: Thank you.

09:57:29 1 JUROR QUIJANO: Margil Quijano, seat 11. I used to
09:57:35 2 be an exempt district manager for a large company for seven
09:57:39 3 years.

09:57:40 4 THE COURT: Okay.

09:57:41 5 JUROR LAUNIUS: Bob Launius, number 12. I am a
09:57:46 6 business owner in Austin, a CPA by trade, and I run the
09:57:53 7 operations of the business. We have about 25 employees, and I
09:57:58 8 do the payroll and the benefits and virtually everything
09:58:03 9 associated with those employees.

09:58:06 10 JUROR COCHRAN: Denise Cochran, seat 13. I'm
09:58:10 11 administrator for Round Rock Administrative School District.

09:58:15 12 JUROR ONTIBEROS: Esperanza Ontiberos, seat 14.
09:58:19 13 Owner/operator of my own business for about five years.

09:58:22 14 JUROR PETIT: Andrea Petit, seat 15. I was a
09:58:25 15 supervisor for five years for a counseling department.

09:58:31 16 JUROR KOEHN: Jody Koehn, seat 26. I was a managing
09:58:37 17 attorney for the Child Support Division of the Attorney
09:58:39 18 General's office for about seven years. Of course, I've been
09:58:42 19 in private practice so I've managed my own secretaries. I also
09:58:48 20 owned a bar for two years, and I managed the staff there, too.

09:58:52 21 THE COURT: Thank you. Anyone else?

09:58:56 22 JUROR JAMES: I'm Warren James, seat 19. I'm a
09:59:00 23 business owner of several businesses.

09:59:05 24 THE COURT: All right. Thank you. Anyone else?

09:59:07 25 (No response)

09:59:08 1 THE COURT: All right. Now, other than what you have
09:59:11 2 already stated -- because some of these questions kind of
09:59:14 3 overlap. So if you've already given what I'm going to ask you
09:59:17 4 in some of the following questions in a previous answer, you
09:59:21 5 don't have to repeat it. But other than what has already been
09:59:24 6 stated, have any or any family member or close friend known to
09:59:27 7 you ever been employed in a personnel or human resources
09:59:29 8 department for an employer? If so, please raise your hand.

09:59:41 9 JUROR FLORES: Arnulfo Flores, seat four. My sister
09:59:42 10 works in the HR department for a private company here in
09:59:45 11 Austin.

09:59:46 12 THE COURT: Thank you.

09:59:49 13 JUROR SCHELL: Alma Schell, seat six. As I stated
09:59:51 14 earlier, one of my dearest friends is actually -- she does a
09:59:56 15 lot of the hiring for -- I guess in the health care.

10:00:01 16 THE COURT: Thank you.

10:00:08 17 JUROR NEFF: Brad Neff, seat 17. I believe my wife
10:00:12 18 used to work in the HR department of a law firm here in Austin.

10:00:16 19 THE COURT: All right.

10:00:21 20 JUROR POPOV: Allison Popov, seat 25. I'm not sure
10:00:25 21 if this totally pertains, but my sister is a lawyer --
10:00:28 22 practicing lawyer working in the health care industry in Oregon
10:00:32 23 and she mostly deals with HIPAA.

10:00:35 24 THE COURT: Thank you.

10:00:43 25 JUROR CALERO: Maria Calero, 16. And I worked for

10:00:47 1 the YMCA as assistant personnel director. I did this for seven
10:00:53 2 years. I was in charge of three branches and 17 day care
10:00:57 3 centers and all the employees, the firing and the hiring.

10:00:59 4 THE COURT: Thank you. Anyone else who has worked in
10:01:02 5 a Human Resources Department or employer personnel department?

10:01:11 6 (No response)

10:01:11 7 THE COURT: Have any of you or any member of your
10:01:13 8 family or close personal friend, known to you, ever had an
10:01:21 9 employment complaint filed against you? In other words, has an
10:01:26 10 employee complained about you?

10:01:29 11 JUROR ONTIBEROS: Esperanza Ontiberos, seat 14. When
10:01:35 12 I was owner/operator, yes, we had complaints filed against us.

10:01:38 13 THE COURT: Okay. Thank you.

10:01:45 14 JUROR KOEHN: Jody Koehn, seat 26. When I was a
10:01:47 15 managing attorney for the Corpus Christi office, we fired one
10:01:50 16 of the attorneys. And so I don't think I was -- I don't
10:01:53 17 remember being named personally in the suit, but I was involved
10:01:55 18 in the discrimination suit she filed in federal court.

10:01:58 19 THE COURT: Thank you.

10:02:06 20 JUROR BASINGER: Shirley Basinger, seat three. I was
10:02:10 21 laid off and went to draw employment, and my former employer
10:02:14 22 took me to court because I cashed a vacation check.

10:02:22 23 THE COURT: All right. Thank you. Anyone else?

10:02:24 24 (No response)

10:02:26 25 THE COURT: Now the other side of that, have you or

10:02:29 1 any member of your family, known to you, or close friend ever
10:02:32 2 filed a complaint or a grievance against an employer? If so,
10:02:36 3 please raise your hand.

10:02:37 4 JUROR ASHBROOK: Shirley Ashbrook, seat one. We had
10:02:42 5 a group of employees that filed a grievance against a
10:02:46 6 supervisor.

10:02:47 7 THE COURT: All right. Thank you. Anyone else?

10:02:49 8 (No response)

10:02:51 9 THE COURT: Have you or a member of your family,
10:02:59 10 known to you, or any close friend ever filed a claim,
10:03:02 11 complaint, lawsuit, or grievance claiming that you were not
10:03:06 12 paid overtime wages other than what you've already expressed.

10:03:10 13 Again, a lot of these questions overlap.

10:03:14 14 JUROR POPOV: Allison Popov, seat 25. My husband --
10:03:20 15 I'm not sure if he -- I think he was compensated for it, but
10:03:24 16 I'm not totally positive. He works for a very large software
10:03:28 17 company, and there was something having to do with overtime and
10:03:35 18 salaried employees. And so they ended up switching whichever
10:03:38 19 one it was, and he might have been compensated for that.

10:03:41 20 THE COURT: Thank you. Anyone else who's filed a
10:03:44 21 claim?

10:03:48 22 JUROR QUIJANO: Margil Quijano, seat 11. I filed a
10:03:52 23 complaint against a company about not paying overtime. It was
10:03:59 24 six years ago.

10:04:00 25 THE COURT: All right. Thank you. Anyone else?

10:04:03 1 (No response)

10:04:04 2 THE COURT: Have you or a member of your family or

10:04:09 3 close friend, known to you, filed a claim, complaint, lawsuit,

10:04:12 4 or grievance complaining about the City of Austin or any of its

10:04:16 5 employees? Any complaints against the City?

10:04:20 6 (No response)

10:04:21 7 THE COURT: Have any of you or any member of your

10:04:24 8 family or any close friend known to you ever sued a government

10:04:27 9 or governmental entity such as a county, a city, a state, or

10:04:33 10 the federal government?

10:04:42 11 Pardon me. See, I'm the old blind one, so you've got

10:04:44 12 to stick your hand way up in the air.

10:04:46 13 JUROR MATIC: Milan Matic, seat two. The case I

10:04:49 14 mentioned when I was a plaintiff 15 years ago. It was in a

10:04:52 15 different state, South Carolina, but it was against the highway

10:04:56 16 department.

10:04:57 17 THE COURT: All right. And what was the nature of

10:04:58 18 that case?

10:04:59 19 JUROR MATIC: My mom was killed in a car accident.

10:05:01 20 And my stepfather -- I was a minor at the time, so my

10:05:05 21 stepfather took them to court. And I was part of the suit

10:05:09 22 because I was -- it was my mom. So ...

10:05:11 23 THE COURT: And was there awarded compensation and

10:05:15 24 money made as a result of that case?

10:05:17 25 JUROR MATIC: Yes.

10:05:18 1 THE COURT: All right. Thank you. Anyone else?

10:05:20 2 (No response)

10:05:21 3 THE COURT: Is anyone here a paramedic, police

10:05:25 4 officer, or firefighter?

10:05:27 5 (No response)

10:05:29 6 THE COURT: And do you have any close family members

10:05:31 7 or friends who are paramedics, police officers, or

10:05:35 8 firefighters?

10:05:36 9 JUROR BASINGER: Shirley Basinger, seat three. My

10:05:40 10 brother-in-law is a police officer.

10:05:42 11 THE COURT: All right. And where is that?

10:05:43 12 JUROR BASINGER: Travis County.

10:05:45 13 THE COURT: All right. Thank you.

10:05:49 14 JUROR NEFF: Brad Neff, 17. A couple of friends who

10:05:52 15 are firefighters here in Austin.

10:05:54 16 THE COURT: Thank you.

10:05:57 17 JUROR BEST: Norman Best, seat 18. My grandson is a

10:06:03 18 police officer.

10:06:03 19 THE COURT: Where is that?

10:06:04 20 JUROR BEST: Coryell County.

10:06:06 21 THE COURT: Thank you.

10:06:08 22 JUROR ROWE: Angela Rowe, seat number five. I have

10:06:15 23 some in-law -- a couple of in-laws that are highway patrol.

10:06:19 24 And my uncle is retired fire department.

10:06:22 25 THE COURT: Thank you.

10:06:24 1 JUROR SCHELL: Alma Schell, seat six. My first
10:06:28 2 cousin is a police officer in Dallas.

10:06:35 3 JUROR OVERBY: Connor Overby, seat 20. My
10:06:41 4 brother-in-law is a firefighter and a paramedic, and we have a
10:06:46 5 family friend who is both a firefighter and paramedic also.

10:06:51 6 JUROR PRYOR: Mark Pryor, number 23. My brother is a
10:06:59 7 police officer in Aspen, Colorado. And I work with -- as a
10:07:05 8 prosecutor, I work with police and EMS and firefighters off and
10:07:09 9 on.

10:07:09 10 THE COURT: Thank you.

10:07:11 11 JUROR SHELDON: Tonya Sheldon, number 24. My
10:07:16 12 brother, brother-in-law, husband, and cousin are all police
10:07:19 13 officers.

10:07:20 14 THE COURT: Thank you.

10:07:23 15 JUROR KOEHN: Jody Koehn, 26. My brother is a police
10:07:29 16 lieutenant with the Plano Police Department.

10:07:33 17 JUROR COCHRAN: Denise Cochran, seat number 13. I
10:07:36 18 have a dear friend that's an instructor for EMS right now.

10:07:41 19 JUROR CALERO: Maria Calero, 16. My brother, my
10:07:46 20 cousins and -- I have like six or seven cousins that are police
10:07:51 21 officers in El Paso, Texas. One of them is the chief of
10:07:54 22 police. Also I have several cousins that are CIA and FBI. I
10:08:01 23 also have two real good friends here in Austin that are police
10:08:05 24 officers, and two of my best friends are EMS.

10:08:08 25 THE COURT: Anyone else?

10:08:11 1 (No response)

10:08:13 2 THE COURT: Is there anyone here who is employed in
10:08:16 3 the medical field or have family members or close friends who
10:08:20 4 are employed in the medical field other than has already
10:08:23 5 expressed, again, including emergency medical service
10:08:28 6 personnel?

10:08:31 7 JUROR ONTIBEROS: Esperanza Ontiberos, seat 14. My
10:08:35 8 sister's a nurse, and my daughter's in the medical field also.

10:08:38 9 THE COURT: Thank you.

10:08:40 10 JUROR COCHRAN: Denise Cochran, seat number 13. My
10:08:43 11 husband works for the Seton Health Network here in Austin.

10:08:51 12 JUROR SCHELL: Alma Schell, seat six. My brother is
10:08:54 13 a doctor, and any sister-in-law is a doctor as well.

10:08:58 14 JUROR BASINGER: Shirley Basinger, seat three. I
10:09:05 15 work for Seton.

10:09:06 16 THE COURT: All right.

10:09:07 17 JUROR MATIC: Milan Matic, seat two. So in addition
10:09:12 18 to my wife, I have a lot of friends that are nurses and techs
10:09:16 19 in various fields in the medical profession.

10:09:19 20 THE COURT: Anyone else?

10:09:27 21 (No response)

10:09:27 22 THE COURT: Is there any one of you or any family
10:09:31 23 member of yours or any close, personal friends that you know of
10:09:33 24 who's ever been treated by a paramedic or EMS worker in the
10:09:37 25 nature of emergency treatment?

10:09:38 1 JUROR BASINGER: Shirley Basinger, seat three. I was
10:09:41 2 taken to the emergency room.

10:09:45 3 THE COURT: Thank you.

10:09:46 4 JUROR MATIC: Milan Matic, seat two. I was in a bad
10:09:52 5 car accident probably about 15 -- about 12 years ago, I guess.
10:09:57 6 And I was taken to the hospital in an ambulance.

10:10:03 7 JUROR SCHELL: Alma Schell, seat six. I have -- my
10:10:07 8 youngest child has epilepsy and has been taken twice by EMS to
10:10:14 9 the hospital.

10:10:18 10 JUROR PRYOR: Mark Pryor, 23. About five years ago I
10:10:22 11 went to a hospital in an ambulance.

10:10:26 12 JUROR POPOV: Allison Popov, seat 25. I had a lot of
10:10:31 13 elderly relatives that my parents and I helped care for for
10:10:35 14 many years, and they were taken many, many times by EMS to the
10:10:41 15 hospital.

10:10:42 16 JUROR SPIKES: Brent Spikes, number 10. I've been
10:10:48 17 taken, my wife, and my son. Myself it was a car wreck. Wife,
10:10:53 18 medical issues. And my son was an appendectomy -- subsequent
10:11:03 19 problem with a botched appendectomy.

10:11:07 20 JUROR LAUNIUS: Bob Launius, number 12. I have four
10:11:11 21 children, and we've had several trips via ambulance during
10:11:19 22 their upbringing.

10:11:21 23 JUROR COCHRAN: Denise Cochran, seat 13. When my
10:11:25 24 child was an infant and my father.

10:11:28 25 JUROR ONTIBEROS: Esperanza Ontiberos, seat 14.

10:11:33 1 Father, brother, cousins, niece, and nephew.

10:11:38 2 JUROR PETIT: Andrea Petit, seat 15. My father was

10:11:41 3 taken in an ambulance.

10:11:45 4 JUROR CALERO: Maria Calero, 16. I'm a diabetic, and

10:11:50 5 before my sugar was controlled, EMS lived at my home.

10:11:59 6 JUROR POPOV: Sorry. Allison Popov, 25. I also

10:12:03 7 forgot my mother was taken by ambulance a pretty long distance,

10:12:07 8 from San Marcos back to Austin.

10:12:10 9 JUROR ASHBROOK: Shirley Ashbrook, seat one. My

10:12:17 10 parents have been taken by EMS to the hospital.

10:12:22 11 THE COURT: Anyone else?

10:12:23 12 (No response)

10:12:24 13 THE COURT: Now, I have given you a little bit of a

10:12:28 14 rundown on the facts of this case and what it's about. Do any

10:12:31 15 of you know any facts or are familiar with any other case that

10:12:36 16 might have been similar to this case?

10:12:41 17 (No response)

10:12:42 18 THE COURT: Does anyone have any specialized legal

10:12:45 19 knowledge involving the Fair Labor Standards Act? That is the

10:12:49 20 federal law that governs wages and overtime that we've

10:12:54 21 discussed somewhat this morning.

10:12:56 22 (No response)

10:12:58 23 THE COURT: Is there any one of you a member of an

10:13:02 24 organization that is focused on labor issues or workers'

10:13:06 25 rights? If so, please raise your hand.

10:13:08 1 (No response)

10:13:09 2 THE COURT: And have any of you ever held an elected
10:13:14 3 office for any government at any level -- city, county, state,
10:13:20 4 or federal?

10:13:21 5 (No response)

10:13:22 6 THE COURT: All right. Now, ladies and gentlemen, I
10:13:24 7 have given the lawyers an opportunity to ask some questions to
10:13:30 8 you at this time. I was a lawyer on their side of the bench
10:13:36 9 for 28 and a half years, so I've limited their time so we won't
10:13:39 10 be here the rest of your lives while they ask you questions. I
10:13:43 11 know how that can be. So if I interrupt one of them and say,
10:13:47 12 "Thank you," they haven't done anything wrong. They've just
10:13:50 13 come to the end of their time.

10:13:54 14 Please remember during the lawyers' questions, as I
10:13:57 15 stated earlier, that some of their questions may seem intrusive
10:14:00 16 to you, as have mine, I feel certain. I assure you that the
10:14:04 17 lawyers have no desire to pry into your backgrounds
10:14:08 18 unnecessarily, but, rather, are doing it to ensure that each of
10:14:12 19 you can act independently and without bias in serving as a
10:14:17 20 juror in this case.

10:14:17 21 Further, the lawyers are given certain preemptory
10:14:22 22 strikes which they can exercise and their questions will give
10:14:26 23 them information on which to base those strikes.

10:14:28 24 Please remember that if any time you do not want to
10:14:33 25 publicly answer a question, you may approach the bench and

10:14:37 1 answer the question with only the judge and the lawyers
10:14:41 2 present.

10:14:41 3 Mr. Deats, you may proceed.

10:14:47 4 MR. DEATS: Your Honor, with your permission, I'm
10:14:49 5 going to ask my legal assistant to hand out some numbered
10:14:54 6 cards. I'm going to ask the juror some scaled questions.

10:14:56 7 THE COURT: And what are you going to do with the
10:14:58 8 cards?

10:14:58 9 MR. DEATS: Your Honor, we're going to ask them to
10:15:00 10 hold them up in response to the questions. It's a way of
10:15:03 11 quickly getting information about the entire pool.

10:15:05 12 THE COURT: That would fine. Any objection from the
10:15:07 13 City, though?

10:15:08 14 MR. COPPOLA: No objection, Your Honor.

10:15:13 15 MR. DEATS: Thank you very much.

10:15:14 16 While she's doing that, let me tell you a little bit
10:15:18 17 about what we're going to do. Again, as the Judge indicated to
10:15:21 18 you, we're trying to learn if you have any biases that would
10:15:24 19 make maybe not as fair a juror as some other juror might be.
10:15:28 20 And we're really not trying to pry, so please don't hold that
10:15:35 21 against us.

10:15:36 22 I'm going to ask you a series of questions now, and
10:15:38 23 my legal assistant is providing you numbered cards that
10:15:41 24 hopefully correspond to your juror number. When I ask you
10:15:45 25 these questions -- and we will show it to you on the chart as

10:15:47 1 well. I'm going to ask each of you to vote by holding up your
10:15:51 2 card when you get to the appropriate answer. As I read the
10:15:53 3 statement for each question, hold up the card at the
10:15:57 4 appropriate time, stating whether you strongly agree, slightly
10:16:01 5 agree, slightly disagree, or strongly disagree.

10:16:04 6 THE COURT: Now, let me say something right here.
10:16:06 7 You're going to have to place those charts where both the Court
10:16:10 8 and the City of Austin's attorneys can see it. It's a little
10:16:15 9 difficult in this courtroom, but you're going to have to work
10:16:17 10 it out to where everybody can see what's going on here.

10:16:19 11 MR. DEATS: Very good, Your Honor.

10:16:21 12 And as you vote, vote according to your immediate
10:16:25 13 reaction. Vote according to how you feel. Don't vote on what
10:16:30 14 you think the law is or what you think the law should be.
10:16:33 15 Don't vote according to what you think is politically correct.
10:16:37 16 When you raise your card to vote, please hold it in the air
10:16:40 17 until I call your number.

10:16:42 18 So does anybody feel uncomfortable about voting with
10:16:46 19 regards to these questions?

10:16:48 20 (No response)

10:16:49 21 MR. DEATS: Okay. Let's take question number one.
10:16:50 22 Employees who make \$80,000 a year should not worry about
10:16:54 23 whether they get paid overtime. Employees who make 80,000 a
10:16:58 24 year should not worry about whether they get paid overtime.

10:17:03 25 Who strongly agrees with that statement? Please hold

10:17:05 1 up your cards.

10:17:07 2 Who slightly agrees with that statement?

10:17:13 3 I see juror 5, juror 8, juror 19, juror 21, juror 25,

10:17:20 4 juror 26. Thank you.

10:17:22 5 Who slightly disagrees with that statement?

10:17:26 6 I see juror 1, 2, 3, 4, 20, 22, 23, 24, 9, 10, 12,

10:17:36 7 13, 15 in that back row.

10:17:39 8 And who strongly disagrees with that statement?

10:17:43 9 I see juror 6, 7, 11, 14, 16, 17.

10:17:49 10 Thank you very much.

10:17:50 11 Let's go to the second question. Government

10:17:54 12 employees are paid too much or get too many benefits that

10:17:58 13 private sector employees do not get. Government employees are

10:18:02 14 paid too much or get too many benefits that private sector

10:18:05 15 employees do not get.

10:18:07 16 Who strongly agrees with that statement?

10:18:11 17 MR. DEATS: Juror number 8. Anybody else?

10:18:13 18 Who slightly agrees with that statement?

10:18:16 19 Juror number 11.

10:18:17 20 Thank you very much.

10:18:19 21 Who slightly disagrees with that statement?

10:18:23 22 Juror 2, 17, 20, 21, 24, 9, and 12. Oh. And 16.

10:18:33 23 Excuse me.

10:18:33 24 And who strongly disagrees with that statement?

10:18:37 25 One, 3, 4, 5, 6, 7, 19, 22, 23, 10, 25, 26, 13, 14,

10:18:47 1 15.

10:18:50 2 Let's go to our third question: In this economic

10:18:55 3 climate, people should just be happy to have a job and should

10:18:58 4 not worry too much about whether their pay is being properly

10:19:01 5 calculated. In this economic climate, people should just be

10:19:05 6 happy to have a job and should not worry too much about whether

10:19:08 7 their pay is being properly calculated.

10:19:11 8 Who strongly agrees with that statement? Please hold

10:19:15 9 up your card.

10:19:16 10 No one.

10:19:17 11 Who slightly agrees with that statement?

10:19:19 12 Juror number 8.

10:19:21 13 Who slightly disagrees with that?

10:19:23 14 Juror 2, 5.

10:19:27 15 And who strongly disagrees with that?

10:19:29 16 And that would be everybody else.

10:19:35 17 Let's go to the last of these questions: If a

10:19:42 18 decision about whether an employee should get overtime is

10:19:43 19 complicated, the employer should be given the benefit of the

10:19:47 20 doubt. If a decision about whether an employee should get

10:19:50 21 overtime is complicated, the employer should be given the

10:19:53 22 benefit of the doubt.

10:19:54 23 Who strongly agrees with that statement?

10:19:57 24 Who slightly agrees with that statement?

10:20:00 25 Who slightly disagrees with that statement?

10:20:03 1 Juror 3, 5, 8, 9, 10.

10:20:10 2 And who strongly disagrees with that statement?

10:20:13 3 And that would be, 1, 2, 4, 6, 7, 17, 18, 19, 20, 21,

10:20:18 4 22, 23, 24, 25, 26, 11, 12, 13, 14, 15, 16.

10:20:27 5 Okay. Thank you very much.

10:20:31 6 Now, ladies and gentlemen, that's the end of the

10:20:34 7 scale questions, and I appreciate that. I hope you understand

10:20:37 8 that's an opportunity to get some quick information about

10:20:40 9 everybody on the panel that sometimes we don't get very easily.

10:20:45 10 Now, I want to talk about a couple of other matters

10:20:49 11 that may affect this case. First off I want to point out to

10:20:52 12 you that the City may represent a former Department of Labor

10:20:55 13 employer to testify as to her opinion about how the DOL would

10:21:00 14 look at whether the overtime laws apply to a given employee.

10:21:03 15 Do any of you feel, even slightly, that you have to

10:21:07 16 give more weight to a person's testimony just because they may

10:21:10 17 be labeled an expert witness? And this is an important

10:21:14 18 question from our point. Does anybody feel, even slightly,

10:21:18 19 that you might want to give more weight to a person's opinion

10:21:23 20 because they're labeled an expert than somebody else who is a

10:21:29 21 layperson? Anybody over here in the front row who feels that

10:21:31 22 way? Yes, sir. Number 8.

10:21:33 23 JUROR PARSLEY: Yeah. I think that's why they call

10:21:35 24 them experts. Don Parsley, seat 8. That's why they call them

10:21:39 25 experts. So they carry a little more weight in their

10:21:42 1 testimony.

10:21:43 2 MR. DEATS: Okay. Thank you. Did I see another
10:21:45 3 juror here? Juror 24.

10:21:46 4 JUROR SHELDON: I think they have more knowledge than
10:21:50 5 just the layperson.

10:21:51 6 MR. DEATS: Okay. And, of course, you understand
10:21:54 7 that using an expert makes sense. For example, when you need
10:21:57 8 to know about medical matters, a doctor might be able to
10:22:00 9 explain that, right? But here you're asked to decide a dispute
10:22:05 10 about the facts, what the primary duties of these paramedics
10:22:08 11 are, how they get paid, those sorts of things. Now, the Judge
10:22:12 12 will instruct you on how to apply the law to determine the
10:22:15 13 facts. Obviously, the Judge instructs you on matters of the
10:22:18 14 law.

10:22:19 15 But do any of you feel like an expert in this sort of
10:22:22 16 situation, applying these facts, do any of you feel like you
10:22:26 17 might nonetheless want to give more weight to their testimony
10:22:28 18 than, say, people who do the job and talk about how they do
10:22:32 19 it?

10:22:36 20 Yes, sir. Juror number 10.

10:22:37 21 JUROR SPIKES: Ben Spikes, number 10. Again, like I
10:22:40 22 said before, an expert is an expert.

10:22:44 23 MR. DEATS: Okay. So you feel in this situation that
10:22:46 24 if an expert testifies, you have to give more weight to the
10:22:51 25 expert's testimony just because they are delineated an expert?

10:22:54 1 JUROR SPIKES: Yes.

10:22:55 2 THE COURT: Okay. Thank you very much. And I

10:22:57 3 appreciate that kind of feedback, y'all. That's really

10:23:00 4 important to me, to get that kind of feedback about how you

10:23:02 5 might think or how you might weigh the evidence. Is there

10:23:06 6 anybody else that feels like juror 10?

10:23:07 7 Yes, sir. Number 12.

10:23:09 8 JUROR LAUNIUS: Bob Launius, number 12. Yes. I

10:23:14 9 believe I would give more credence to an expert if it applies

10:23:19 10 to -- to the item being discussed.

10:23:21 11 MR. DEATS: Okay. Thank you. That's very good. I

10:23:24 12 really appreciate that feedback.

10:23:26 13 Anybody else feel that same way? Juror number 17?

10:23:30 14 JUROR NEFF: Brad Neff, 17. Basically just echoing

10:23:36 15 their comments.

10:23:38 16 MR. DEATS: Okay. Yes, ma'am. Number 5?

10:23:41 17 JUROR ROWE: Same as everybody else. An expert is an

10:23:45 18 expert. If he's an expert, then I feel like it should be more

10:23:51 19 weighted.

10:23:51 20 MR. DEATS: Now, I think what the Judge is going

10:23:53 21 to -- or may instruct you. Of course, the Judge will decide

10:23:56 22 what the Judge instructs you. But is going to instruct you

10:23:59 23 that you have the right to listen to an expert witness just

10:24:02 24 like anybody else, believe or disbelieve him, consider

10:24:05 25 potential biases they have.

10:24:06 1 But, still, there's that troubling word, "expert."
10:24:08 2 Anybody else that would be troubled and tend to give more
10:24:12 3 weight to a person's opinion in a situation like this where
10:24:15 4 we're talking about how people do their jobs? Anybody else who
10:24:18 5 hasn't spoken already? And, again, there's no right or wrong
10:24:22 6 answer here. It's just how you feel, and you're helping us
10:24:25 7 with that. Yes, sir. Number 20?

10:24:27 8 JUROR OVERBY: Connor Overby, number 20. I feel that
10:24:33 9 an expert witness could interpret facts differently than a
10:24:37 10 lay-witness. The facts can be -- anybody can read facts, but
10:24:40 11 it's the way the facts are interpreted that's most important.

10:24:45 12 MR. DEATS: Okay. Okay. Thank you very much. I
10:24:48 13 appreciate those comments.

10:24:50 14 Anybody else? Anybody else over here on this side?
10:24:53 15 Number 25.

10:24:55 16 JUROR POPOV: Allison Popov, number 25. I think that
10:25:01 17 if it's a fact, it's a fact. But if it's about something going
10:25:05 18 on, like a personal -- like the way that somebody is doing
10:25:09 19 their job versus an expert -- I'm not wording what I'm thinking
10:25:15 20 very well. But an expert who is thinking like the way it's
10:25:19 21 supposed to be and then the person who is actually experiencing
10:25:23 22 it could be totally two different things. But I do agree an
10:25:27 23 expert has knowledge that another person may not have.

10:25:29 24 MR. DEATS: And do you feel that because of that, you
10:25:31 25 might give more weight to an expert's testimony just because

10:25:34 1 they may be labeled as an expert witness?

10:25:36 2 JUROR POPOV: I would have to hear it. To be
10:25:39 3 perfectly honest, I would have to hear whatever it was.

10:25:42 4 MR. DEATS: Sure. Of course, you understand that
10:25:43 5 people are generally pretty much experts at, you know, what
10:25:46 6 they do in their job. I mean, they know about that. And we're
10:25:49 7 are going to have a lot of testimony, I think, about the way
10:25:53 8 people do their jobs and how they spend their days. And that's
10:25:57 9 going to be important information, I believe, for the jury to
10:26:01 10 receive. And so when you consider all of it -- and I've heard
10:26:05 11 from several of you now -- but the ones who haven't talked to
10:26:08 12 me yet, can you -- are you telling me, then, that you feel like
10:26:12 13 you can listen and weigh the testimony and you won't be swayed
10:26:15 14 necessarily by the label that a witness has, but you're willing
10:26:19 15 to look at the testimony and decide, does this really makes
10:26:22 16 sense to you or does this really, you know, mean something to
10:26:25 17 you and decide how to weigh it? Can you -- can you agree to do
10:26:30 18 that with me? Is there anybody that feels like they can't do
10:26:34 19 that and labels are important, labels matter? Anybody at all?
10:26:39 20 Anybody that hasn't spoken? Just has to be a feeling.

10:26:42 21 Something like that.

10:26:43 22 (No response)

10:26:45 23 MR. DEATS: Okay. Well, thank you very much. I
10:26:47 24 appreciate that feedback, and it's very helpful information for
10:26:50 25 me.

10:26:50 1 Now, I want to talk to you about another matter, and
10:26:53 2 that is job descriptions. You know, again, we're talking about
10:27:01 3 the way people do their jobs, right, and what they do and how
10:27:05 4 they spend most of their day. And that's going to be a very
10:27:09 5 important factor in this case. But, at the same time, probably
10:27:12 6 all of us in our lives at some point have seen job descriptions
10:27:15 7 or we have had a job description given to us that says Here's
10:27:20 8 what you do in your job. And sometimes those are accurate, and
10:27:23 9 sometimes they're not. And sometimes you have personnel
10:27:26 10 policies, and those personnel policies are followed or they're
10:27:30 11 not.

10:27:31 12 But some people, you know, really feel like, man,
10:27:33 13 that means something more to me than even somebody talking
10:27:39 14 about what they do in their job individually during the day.
10:27:42 15 You know, if somebody talks about it, well, here's this piece
10:27:45 16 of paper that says something different and I think I'm going to
10:27:48 17 go with that because that's in writing.

10:27:51 18 Now, is there anybody -- and, again, I'm not asking
10:27:55 19 you about right ways or wrong ways to feel. I'm asking you
10:27:59 20 just about feelings that you have for whatever reason. Is
10:28:02 21 there anybody that feels like, well, I saw it on paper. I'm
10:28:05 22 going to give more credence to that than I am going to give to
10:28:09 23 somebody talking about how they actually do their job. Is
10:28:13 24 there anybody that feels that way even ever so slightly.

10:28:17 25 I mean, I know some of you indicated you have HR

10:28:21 1 experience and you probably helped write job descriptions. And
10:28:24 2 job descriptions are written for a number of reasons. But is
10:28:27 3 there anybody who feels ever so slightly that if I see it on
10:28:30 4 paper, that is going to affect my opinion more than maybe
10:28:33 5 somebody testifying about how they may actually spend their
10:28:37 6 day? Anybody at all? Yes, sir. Juror number 8?

10:28:40 7 JUROR PARSLEY: Don Parsley, number 8. In the
10:28:43 8 context of an employment -- an employee manual that lays out
10:28:50 9 company policies that's acknowledged by the employee prior to
10:28:53 10 employment, I'm going to go with the writing.

10:28:56 11 MR. DEATS: Okay. Very good.

10:28:57 12 Yes, sir. Juror number 10?

10:28:59 13 JUROR SPIKES: Brent spikes, number 10. I guess it
10:29:01 14 would depend on the evidence to support the statement. Just
10:29:04 15 because someone says that they do things, a lot of times
10:29:07 16 there's not necessarily the evidence to support their
10:29:09 17 statements.

10:29:10 18 MR. DEATS: Okay. And so if you saw on paper
10:29:13 19 something different than what the people were saying that they
10:29:15 20 do, you think that that might have an impact on you in terms of
10:29:19 21 evaluating their testimony?

10:29:21 22 JUROR SPIKES: It does with my annual reviews for
10:29:24 23 staff. I mean, there's other duties assigned. But, again,
10:29:27 24 what they say and their -- if it's not supported by factual --
10:29:33 25 or fact, then, again, perception.

10:29:37 1 MR. DEATS: Okay. Okay. This is very good feedback
10:29:40 2 that I'm getting, and I appreciate your comments very much.
10:29:43 3 But is there anybody else that feels the same way? Sometimes
10:29:46 4 you hear another juror talk about it, and maybe it resonates
10:29:51 5 with you. Juror number 12?

10:29:53 6 JUROR LAUNIUS: Bob Launius, number 12. From the
10:29:56 7 perspective of job descriptions, I view them as -- as not
10:30:01 8 all-inclusive. They can't -- they can't possibly pick up on
10:30:04 9 everything that individuals do. But as it relates to
10:30:08 10 compensation, in my experience, I go back to employment
10:30:12 11 agreements and what was originally laid out, what the
10:30:16 12 expectation was on the front end of the engagement, and that's
10:30:20 13 probably where I land.

10:30:23 14 MR. DEATS: Okay. Very good. And so you feel
10:30:26 15 because of that, that when you see something that's in that job
10:30:29 16 description, that even if people are testifying and saying, you
10:30:32 17 know, that's not really how it works, that you give some
10:30:36 18 credence to that job description anyway.

10:30:38 19 JUROR LAUNIUS: I think I would. From a compensation
10:30:41 20 standpoint and overtime is related, I would look back probably
10:30:45 21 at what the original offer was, what the employment agreement
10:30:49 22 stated.

10:30:49 23 MR. DEATS: Okay. Very good. Thank you very much.

10:30:52 24 Yes, ma'am. I think you're juror number 13?

10:30:55 25 JUROR COCHRAN: Yes. I'm probably not going to state

10:30:58 1 this clearly, but I'm an administrator and a teacher, so I work
10:31:01 2 both sides of the fence. And I just don't know that it's ever
10:31:04 3 completely stated in the job description everything we do. You
10:31:08 4 know, as teacher I'm in the trenches, and as an administrator
10:31:11 5 I'm supervising the ones in the trenches. So I don't know that
10:31:15 6 it ever clearly states everything. So I do have a problem with
10:31:18 7 just the statement, I guess, if that's clearly said.

10:31:22 8 MR. DEATS: And what if the employee testified, you
10:31:24 9 know, here's the statement and job description, but it really
10:31:26 10 leaves out some really important things that we do and things
10:31:29 11 that we're expected to do. I mean, would you feel like, Well,
10:31:33 12 no. Here's the job description, and it doesn't say you're
10:31:35 13 expected to do that. So I don't think you really do that.
10:31:38 14 Would you feel that way ever?

10:31:40 15 JUROR COCHRAN: I would answer that by saying, in my
10:31:43 16 own opinion, in my own experience, there are many things that
10:31:46 17 are done that are not stated. If that ...

10:31:50 18 MR. DEATS: And so if employees testify that
10:31:53 19 they did things a certain way, that you could give credence to
10:31:56 20 that even if it wasn't in their job description?

10:31:59 21 JUROR COCHRAN: Yes. Because I witness that every
10:32:01 22 day.

10:32:01 23 MR. DEATS: And, you know, because I believe you
10:32:03 24 said, as a teacher, you know of situations where, you know, a
10:32:06 25 job description may be a bare bones description of something.

10:32:09 1 But then when you really get into how people spend their day
10:32:13 2 and do their duties, there's a lot more to it than that.

10:32:15 3 JUROR COCHRAN: Absolutely.

10:32:18 4 MR. DEATS: Yes, ma'am.

10:32:19 5 JUROR POPOV: Allison Popov, number 25. I'm also a
10:32:22 6 teacher, and have to agree with all of that. We do a lot of
10:32:25 7 things that aren't necessarily put down on paper.

10:32:28 8 MR. DEATS: And are some of those things really
10:32:31 9 important parts of your job?

10:32:31 10 JUROR POPOV: Very much so.

10:32:33 11 MR. DEATS: All right. Thank you very much. Let me
10:32:35 12 go to one other topic real quick because I see my time is about
10:32:40 13 to run out. There's often a lot of confusion what the overtime
10:32:44 14 laws require, and, you know, people have all sorts of opinions
10:32:46 15 about that. And there's a lot of people that believe that
10:32:48 16 supervisors are barred from getting overtime pay.

10:32:52 17 But if the Court were to instruct you that first
10:32:55 18 responders, people like EMS, police, firefighters, those sorts
10:33:00 19 of first responders who respond to emergencies can get overtime
10:33:04 20 regardless of their rank or title, is there anyone who couldn't
10:33:08 21 follow the law on that? Is there anyone who feels like, well,
10:33:11 22 supervisors -- you know, I understand that supervisors don't
10:33:14 23 get overtime. So if they established that they have
10:33:16 24 supervisory duties, then I can't follow the law on that. I
10:33:20 25 can't give them overtime pay if I decide that they are first

10:33:24 1 responders -- that their duties are first response duties.

10:33:27 2 Anybody on this first row who would have trouble with
10:33:30 3 giving overtime to a supervisor who has first time -- first
10:33:34 4 responder duties if the Judge instructs you that that's the
10:33:38 5 law? Anybody on this first row.

10:33:41 6 (No response)

10:33:41 7 MR. DEATS: Anybody on this second row that would
10:33:43 8 have trouble with that?

10:33:47 9 (No response)

10:33:47 10 MR. DEATS: So it won't bother you if you hear they
10:33:50 11 have supervisory duties, but they also have first response
10:33:54 12 duties and they are, in your opinion, based on the evidence,
10:33:55 13 first responders? You could feel comfortable doing that?

10:33:59 14 Anybody over here on this row? This is an important question.

10:34:02 15 Anybody that feels like, well, if they have supervisor duties,
10:34:05 16 that just kind of seals the book for me. I've always
10:34:08 17 understood that supervisors don't get overtime? Anybody?

10:34:12 18 Juror 13, you just smiled a little bit, and I wonder
10:34:15 19 is there some kind of -- something in the back of your mind
10:34:19 20 about that?

10:34:19 21 JUROR COCHRAN: No. It's my life.

10:34:25 22 MR. DEATS: You are in supervisory position, right?
10:34:28 23 I understand that. And so at the same time, though, if the
10:34:34 24 Judge were to instruct you that there's a rule that
10:34:36 25 specifically pertains to first responders, if it's first

10:34:39 1 response work they do, they can get overtime despite
10:34:43 2 supervisory duties. Is there anybody that feels like they
10:34:45 3 couldn't follow the law on that?

10:34:48 4 (No response)

10:34:48 5 MR. DEATS: Anybody in these last few rows here?

10:34:51 6 (No response)

10:34:51 7 MR. DEATS: I believe, Judge, that my time is about
10:34:53 8 to expire. And so with that I will stop my questioning.

10:34:57 9 I thank you very much for your time and attention,
10:34:59 10 and I -- on behalf of all the plaintiffs, we very much
10:35:03 11 appreciate your jury service. Thank you.

10:35:06 12 THE COURT: Mr. Coppola? You have to share the
10:35:15 13 microphone, Mr. Deats.

10:35:17 14 MR. COPPOLA: Good morning, ladies and gentlemen.
10:35:19 15 Again, my name is Chris Coppola. I am an attorney for the City
10:35:22 16 of Austin, and just let me say that I'm thankful for you all to
10:35:25 17 be here and serving in this capacity this morning.

10:35:28 18 And I'd like to also say I'm very proud to be
10:35:31 19 representing the City here this morning. I know a number of
10:35:34 20 you mentioned earlier in response to a question from
10:35:37 21 Judge Yeakel that a number of you have friends and family who
10:35:41 22 are involved in first response and a number of you also
10:35:45 23 mentioned that you have friends and family and yourselves, of
10:35:48 24 course as well, who have been -- had their lives sort of
10:35:52 25 affected directly by emergency medical personnel.

10:35:55 1 And I guess I'm just wondering, first of all, if any
10:35:58 2 of those -- if any of those connections in your lives, if any
10:36:02 3 of those things, you know, tend to make you more sympathetic
10:36:06 4 towards people who are involved as first responders and who do
10:36:10 5 that work? Anybody here in the first row who feels that way,
10:36:15 6 who's had very positive experiences with those people.

10:36:18 7 Yes. Juror number 6?

10:36:21 8 JUROR SCHELL: Your question is?

10:36:24 9 MR. COPPOLA: Would those experiences or having those
10:36:26 10 friends and family members, would that tend to make you more
10:36:29 11 sympathetic to those people involved in that type of work?

10:36:32 12 JUROR SCHELL: Yes. Absolutely.

10:36:35 13 MR. COPPOLA: Thank you very much. I appreciate
10:36:36 14 that. Is there anybody else who feels the same as Ms. Schell?

10:36:37 15 JUROR SHELDON: Yes. My husband. So I'm very dear
10:36:43 16 to that.

10:36:45 17 MR. COPPOLA: Juror number 14. Yes, ma'am?

10:36:47 18 JUROR ONTIBEROS: Absolutely. EMS saves lives all
10:36:51 19 the time.

10:36:52 20 MR. COPPOLA: Okay. Thank you. I appreciate that.

10:37:00 21 JUROR NEFF: I completely agree. I'm very
10:37:02 22 sympathetic to that as well.

10:37:07 23 MR. COPPOLA: And juror number 16?

10:37:09 24 JUROR CALERO: Uh-huh.

10:37:10 25 MR. COPPOLA: Do you feel the same way?

10:37:15 1 JUROR CALERO: Yes. Very much so. Very much so.

10:37:18 2 Very, very, very sympathetic. I believe that these people are

10:37:23 3 very hard workers and they're awesome. That's all I can say.

10:37:26 4 MR. COPPOLA: Those sound like strong feelings, and I

10:37:29 5 appreciate that. I agree that, obviously, first responders do

10:37:33 6 amazing work. Do any of you in terms of those sympathies,

10:37:38 7 would you have difficulty putting those aside and hearing this

10:37:42 8 case when you're hearing sometimes these people, these district

10:37:45 9 commanders, that do first response, would you have a hard time

10:37:49 10 putting that aside when you're considering the facts in this

10:37:52 11 case?

10:37:55 12 Does anybody feel the same way as these two,

10:37:59 13 number 14 and number 16? Would you have a hard time putting

10:38:03 14 those sympathies aside?

10:38:05 15 Thank you. Anybody else that feels that way? I

10:38:08 16 appreciate that feedback. Thank you.

10:38:10 17 One of the things you're -- I think you're going to

10:38:13 18 hear in this case is that the plaintiffs who are, again,

10:38:16 19 district commanders and EMS, is that they don't have the direct

10:38:20 20 authority to hire and to fire or promote the personnel they

10:38:25 21 supervise.

10:38:27 22 If the Judge were to instruct you that the law is

10:38:31 23 that people can be exempt executives and exempt managers even

10:38:37 24 if they don't have that direct authority, would any of you have

10:38:40 25 a hard time still seeing their job as being managers or

10:38:46 1 executives, even if they don't have the ability to directly
10:38:49 2 hire and fire and promote the people that they supervise.
10:38:55 3 Anybody feel that way? Anybody here in the first
10:38:58 4 row.

10:38:59 5 (No response)

10:39:00 6 MR. COPPOLA: Thank you. Sometimes -- I think you're
10:39:05 7 going to hear testimony as well today that sometimes people,
10:39:08 8 the plaintiffs, the district commanders, they are required to
10:39:11 9 respond as -- to dispatched medical calls and they are all
10:39:18 10 licensed paramedics. And sometimes they do provide direct
10:39:24 11 patient care to patients. Because of this fact, is there
10:39:26 12 anyone here who would not be able to find that they are exempt
10:39:30 13 managers or supervisors or exempt administrative employees no
10:39:35 14 matter what the Judge instructs you -- instructs you on the
10:39:39 15 law?

10:39:40 16 Is there anybody who feels that because they do
10:39:42 17 sometimes provide direct patient care, that it doesn't matter
10:39:46 18 what the Judge instructs you, you are not going to find that
10:39:49 19 they are exempt employees?

10:39:53 20 MR. COPPOLA: Yes, Ms. Schell.

10:39:55 21 JUROR SCHELL: I think so. Because even if they
10:39:58 22 don't on -- you know, one time don't have to, perhaps, they
10:40:03 23 always have to be ready and prepared. So that doesn't exempt
10:40:06 24 them in my mind.

10:40:07 25 MR. COPPOLA: Okay. Is there anybody that feels that

10:40:09 1 way? Did everybody hear what Ms. Schell had to say? Is there
10:40:14 2 anybody else who feels that way?

10:40:17 3 Okay. Thank you. I'd like to ask you a couple of
10:40:24 4 individual questions. Ms. Ashbrook, is it, juror number 1?

10:40:28 5 JUROR ASHBROOK: Yes.

10:40:28 6 MR. COPPOLA: I think you mentioned earlier in
10:40:31 7 response to one of Judge Yeakel's questions that you filed a
10:40:34 8 complaint against a supervisor before; is that correct?

10:40:37 9 JUROR ASHBROOK: Yes, sir.

10:40:38 10 MR. COPPOLA: Can you tell me what that was about?

10:40:40 11 JUROR ASHBROOK: It was discrimination against the
10:40:43 12 employees -- there were about five of us -- and the way we were
10:40:45 13 treated in the workplace.

10:40:46 14 MR. COPPOLA: And how did you feel that complaint was
10:40:48 15 handled by your employer.

10:40:50 16 JUROR ASHBROOK: It was done really great. And, I
10:40:52 17 mean, they did a good job and they heard everybody's testimony
10:40:56 18 and everything worked out fine.

10:40:58 19 MR. COPPOLA: Was there any lawsuit involving those
10:41:01 20 complaints.

10:41:01 21 JUROR ASHBROOK: Only within the business. It was a
10:41:06 22 State grievance.

10:41:07 23 MR. COPPOLA: It was state. Were you working for the
10:41:09 24 State at that time?

10:41:10 25 JUROR ASHBROOK: Yes.

10:41:11 1 MR. COPPOLA: What were you doing for the State?

10:41:12 2 JUROR ASHBROOK: I was in the consulting contract

10:41:14 3 office.

10:41:14 4 MR. COPPOLA: Okay.

10:41:16 5 JUROR ASHBROOK: Hiring consultants.

10:41:17 6 MR. COPPOLA: And do you work -- do you work with the

10:41:20 7 State now?

10:41:20 8 JUROR ASHBROOK: Yes. Thirty years in February.

10:41:22 9 MR. COPPOLA: What do you do?

10:41:23 10 JUROR ASHBROOK: I am a project program manager for

10:41:26 11 TxDOT.

10:41:27 12 MR. COPPOLA: Do you supervise any employees in that

10:41:28 13 capacity?

10:41:29 14 JUROR ASHBROOK: No. I oversee about 15 federal

10:41:34 15 grants.

10:41:35 16 MR. COPPOLA: Okay. Thank you.

10:41:37 17 Juror number 3, Ms. Basinger?

10:41:40 18 JUROR BASINGER: Yes.

10:41:42 19 MR. COPPOLA: Hi. I think you mentioned earlier that

10:41:44 20 you're an executive assistant for Seton. Is that --

10:41:48 21 JUROR BASINGER: I didn't mention that, but I am.

10:41:50 22 MR. COPPOLA: Oh, I'm sorry. I thought I heard you

10:41:51 23 mention --

10:41:51 24 JUROR BASINGER: No. I work for Seton.

10:41:52 25 MR. COPPOLA: I may have seen it on a juror

10:41:55 1 information form. Can you tell me what kind of work -- who do
10:41:59 2 you work for at Seton? Who are you an executive for?

10:42:02 3 JUROR BASINGER: I work for the vice president and
10:42:05 4 COO of Seton Shoal Creek Hospital and the DON, the Director of
10:42:11 5 Nursing.

10:42:12 6 MR. COPPOLA: Okay. Do you supervise any employees
10:42:13 7 yourself in that job?

10:42:14 8 JUROR BASINGER: I do not.

10:42:16 9 MR. COPPOLA: Okay. Have you ever supervised
10:42:17 10 employees?

10:42:17 11 JUROR BASINGER: I have not.

10:42:18 12 MR. COPPOLA: And are you paid overtime when you have
10:42:21 13 to work more than 40 hours a week?

10:42:23 14 JUROR BASINGER: No.

10:42:24 15 MR. COPPOLA: Thank you. I appreciate your answers.

10:42:33 16 Mr. Flores, I saw in your juror information form that
10:42:35 17 you're a graphic designer; is that right?

10:42:37 18 JUROR FLORES: That's right.

10:42:38 19 MR. COPPOLA: Can you describe what you do on a
10:42:40 20 regular basis.

10:42:41 21 JUROR FLORES: I create illustrations for Online --
10:42:46 22 educational Online textbooks or eBooks for Online learning.

10:42:53 23 MR. COPPOLA: Do you work for a large employer, or
10:42:56 24 are you kind of on your own?

10:42:58 25 JUROR FLORES: I work for a private company here in

10:43:01 1 town. It's, I want to say, about 50 or 60 employees.

10:43:05 2 MR. COPPOLA: Okay. Do you supervise any other
10:43:07 3 employees?

10:43:07 4 JUROR FLORES: No.

10:43:08 5 MR. COPPOLA: Do you receive overtime, sir?

10:43:10 6 JUROR FLORES: No, I don't.

10:43:11 7 MR. COPPOLA: Okay. Thank you.

10:43:15 8 Ms. Rowe, I think you mentioned early you're a
10:43:17 9 paralegal?

10:43:18 10 JUROR ROWE: Yes, I am.

10:43:19 11 MR. COPPOLA: Are you currently working for a law
10:43:20 12 firm?

10:43:21 13 JUROR ROWE: No. Not right now. I went in-house. I
10:43:24 14 work for a medical device company.

10:43:25 15 MR. COPPOLA: When you worked for Baker Botts, did
10:43:28 16 you primarily work on defense cases?

10:43:31 17 JUROR ROWE: Intellectual property law.

10:43:33 18 MR. COPPOLA: Intellectual property law. Very good.

10:43:35 19 Thank you.

10:43:42 20 Juror number 11, Mr. Quijano?

10:43:51 21 JUROR QUIJANO: Yes.

10:43:51 22 MR. COPPOLA: I think you mentioned earlier that you
10:43:53 23 had previously filed a complaint against one of your employers
10:43:56 24 for not receiving overtime. Did you say that?

10:43:59 25 JUROR QUIJANO: Right.

10:43:59 1 MR. COPPOLA: Can you tell me what the circumstances
10:44:01 2 were of that compliant?

10:44:03 3 JUROR QUIJANO: Because we were told we were exempt
10:44:05 4 because we were in sales. So we were working 50 hours a week,
10:44:09 5 and we were making salary.

10:44:12 6 MR. COPPOLA: Yes, sir.

10:44:14 7 JUROR QUIJANO: And we decided to fight the company.

10:44:17 8 MR. COPPOLA: Did you file it internally, or did you
10:44:22 9 file a lawsuit?

10:44:23 10 JUROR QUIJANO: No. It was a lawsuit.

10:44:24 11 MR. COPPOLA: A lawsuit. And what was the outcome of
10:44:27 12 that lawsuit?

10:44:27 13 JUROR QUIJANO: We got paid.

10:44:29 14 MR. COPPOLA: You got paid. Is there anything about
10:44:30 15 that experience -- and that sounds like it was -- was it a
10:44:35 16 difficult experience for you to undergo?

10:44:37 17 JUROR QUIJANO: Yes. I think for all parties, for
10:44:39 18 the company and for us.

10:44:40 19 MR. COPPOLA: You know, having that experience, would
10:44:42 20 that tend to make you more sympathetic to the plaintiffs here
10:44:46 21 who are also requesting that they be paid overtime?

10:44:50 22 JUROR QUIJANO: Correct.

10:44:51 23 MR. COPPOLA: That would make you more sympathetic?

10:44:53 24 JUROR QUIJANO: Correct.

10:44:54 25 MR. COPPOLA: Would you have a hard time putting

10:44:56 1 those feelings aside when you're looking at the evidence in
10:44:59 2 this case.

10:44:59 3 JUROR QUIJANO: Yeah. When you put it that way, yes.

10:45:02 4 MR. COPPOLA: Okay. Thank you, sir.

10:45:07 5 Ms. Petit, I think I saw on your juror information
10:45:12 6 form that you were a case manager; is that right?

10:45:14 7 JUROR PETIT: Uh-huh.

10:45:14 8 MR. COPPOLA: Can you tell me who you work for?

10:45:15 9 JUROR PETIT: I work for a nonprofit, LifeWorks, and
10:45:18 10 I work in their foster care department.

10:45:20 11 MR. COPPOLA: Okay. Do you supervise other employees
10:45:22 12 in that capacity?

10:45:23 13 JUROR PETIT: Not at this time, no.

10:45:25 14 MR. COPPOLA: Okay. What sort of work do you do on a
10:45:27 15 regular basis.

10:45:28 16 JUROR PETIT: I work with 18-year-olds that are
10:45:32 17 coming out of Austin Care, and we just manage them for three
10:45:35 18 years.

10:45:36 19 MR. COPPOLA: Thank you very much. I appreciate
10:45:38 20 that.

10:45:52 21 Mr. Deats asked you a couple of questions about how
10:45:55 22 you would consider expert testimony, and some of you expressed
10:46:01 23 the opinion that just hearing that somebody was an expert would
10:46:08 24 cause you to maybe give their testimony a little more credence

10:46:10 25 I'm wondering, though -- and I think -- Ms. Popov, I

10:46:13 1 think you mentioned -- juror number 25 -- that you have to wait
10:46:17 2 to hear the testimony before you can assign any weight to it,
10:46:20 3 whether you could decide whether it was credible or not
10:46:22 4 credible and how much weight to assign to the testimony.

10:46:25 5 Does anybody else feel that way, that they would have
10:46:28 6 to wait to hear the testimony before they could decide how
10:46:31 7 much -- how much credence to give to it?

10:46:36 8 Juror number 14.

10:46:37 9 JUROR ONTIBEROS: Absolutely. Because sometimes life
10:46:40 10 teaches you better than an expert.

10:46:43 11 MR. COPPOLA: Okay. Everybody that feels that same
10:46:46 12 way, raise your numbers up. I would appreciate that. She said
10:46:53 13 that sometimes people --

10:46:55 14 JUROR ONTIBEROS: Life experience teaches more than
10:46:57 15 what an expert can teach.

10:47:02 16 MR. COPPOLA: Life experience teaches you more than
10:47:04 17 what an expert can teach you.

10:47:09 18 Can you just hold those up for another moment,
10:47:12 19 please. Thank you very much. I appreciate it.

10:47:14 20 Mr. Pryor?

10:47:20 21 JUROR PRYOR: Yeah. I think she said sometimes.

10:47:23 22 MR. COPPOLA: Sometimes. I'm sorry. I agree with
10:47:25 23 that statement. I appreciate that. Thank you, sir

10:47:37 24 I think I have just one last question. Mr. Deats
10:47:41 25 asked you a little bit about, you know, whether you would

10:47:45 1 give -- tend to give more credence to the written job
10:47:48 2 description over what people say they do on a regular basis.
10:47:54 3 I'm wondering if -- you know, if just because people are going
10:47:57 4 to testify about what they do on a regular basis, I'm wondering
10:48:01 5 if you would be more likely to agree with them no matter what
10:48:05 6 the other evidence shows you in the case.

10:48:07 7 Does anybody feel that way, that just because
10:48:09 8 somebody gets up and testifies about what they do on regular
10:48:15 9 basis, they would be more likely to agree with that no matter
10:48:18 10 what the other evidence -- the written evidence shows in the
10:48:22 11 case?

10:48:23 12 Juror number 24?

10:48:25 13 JUROR SHELDON: Well, I believe when you're talking
10:48:32 14 about emergency personnel, there's no way you could have
10:48:34 15 written procedures and policies. Each thing is a case-by-case
10:48:37 16 and it's at the officer's discretion. I just don't feel like a
10:48:40 17 written policy in terms of an emergency personnel could ever be
10:48:44 18 complete.

10:48:46 19 MR. COPPOLA: Okay. Thank you. Does anybody else
10:48:48 20 agree with Ms. Sheldon? Ms. Popov? Okay. Anybody else feel
10:48:54 21 that way? Did everybody hear that?

10:48:58 22 JUROR SCHELL: Number 6.

10:48:59 23 MR. COPPOLA: Number 6 as well? I'm sorry. Thank
10:49:01 24 you, Ms. Schell.

10:49:02 25 Thank you very much for your time. I appreciate it.

10:49:04 1 And for your services. Thank you.

10:49:08 2 THE COURT: Ladies and gentlemen, I just have a few

10:49:16 3 final questions for you at this time, and then we will commence

10:49:22 4 selecting the jury.

10:49:23 5 Do any of you know of any reason why you may be

10:49:29 6 prejudiced for or against any of the parties because of this

10:49:33 7 lawsuit or any other reason that you have not already disclosed

10:49:38 8 in answer to either my questions or questions by the lawyers.

10:49:44 9 (No response)

10:49:45 10 THE COURT: And if you were one of the parties in

10:49:47 11 this case, do you know of any reason why you would not be

10:49:52 12 content to have the case tried by someone in your frame of

10:49:56 13 mind? In other words, if you were sitting where the plaintiffs

10:50:00 14 or the defendant sits and had heard what you have heard today,

10:50:05 15 do you know of any reason why you wouldn't be content to have

10:50:09 16 the case tried by someone in your frame of mind?

10:50:12 17 (No response)

10:50:13 18 THE COURT: Now, can you think of any other matters

10:50:16 19 not yet touched upon which you should call to the Court's

10:50:19 20 attention that may have some bearing on your qualifications as

10:50:24 21 a juror or which may prevent you from rendering a fair and

10:50:29 22 impartial verdict in this case?

10:50:34 23 (No response)

10:50:36 24 THE COURT: All right. Let me see lawyers at the

10:50:38 25 bench, please.

10:50:38 1 (At the bench, on the record)

10:51:06 2 THE COURT: All right. Now, what I'm getting ready

10:51:10 3 to do is recess the panel so we can strike the list. Is there

10:51:15 4 any juror that you are contemplating a peremptory challenge for

10:51:21 5 that you would like held back because there may be one or two

10:51:26 6 questions -- not a lot of questions -- that we want to take up

10:51:29 7 with them before you make your challenge for cause?

10:51:31 8 Mr. Deats, I start with you.

10:51:33 9 MR. DEATS: Judge, I'm sorry. Can you repeat what --

10:51:36 10 THE COURT: All right. You're going to have a chance

10:51:38 11 to challenge for cause.

10:51:40 12 MR. DEATS: Yeah. I understand that.

10:51:41 13 THE COURT: You've heard what the jurors have said

10:51:43 14 that you may be contemplating challenging for cause. Is there

10:51:47 15 any of those jurors that you're contemplating challenging for

10:51:51 16 cause that you would like to have held back for a couple of

10:51:54 17 more brief questions before you make your challenge or are you

10:51:57 18 content with what they've already said?

10:51:59 19 MR. DEATS: Your Honor, I would like juror number 5

10:52:02 20 held back and juror number 10. Held back.

10:52:05 21 THE COURT: All right. Juror number 5 is Ms. Rowe.

10:52:09 22 MR. DEATS: Yes, sir.

10:52:09 23 THE COURT: And juror number 10 is Mr. Spikes; is

10:52:13 24 that correct?

10:52:14 25 MR. DEATS: That's correct, Your Honor.

10:52:15 1 THE COURT: All right. Does the City have anyone
10:52:17 2 they want held back at this time?

10:52:19 3 MR. COPPOLA: I think juror number 8, Your Honor.

10:52:25 4 THE COURT: Mr. Parsley?

10:52:26 5 MR. COPPOLA: Yes, Your Honor.

10:52:26 6 THE COURT: All right. Any others?

10:52:29 7 MR. COPPOLA: I don't believe so, Your Honor.

10:52:45 8 THE COURT: All right. Here's what's going to
10:52:47 9 happen. I'm going to let everybody go but those three. And
10:52:50 10 then we'll bring them to the bench one at a time. And as we
10:52:53 11 finish with them, I'll let them go. Then you'll have your
10:52:56 12 chance to make your challenges for cause, and I'll rule on
10:52:58 13 them. And then I will take up, as I said, anyone that might be
10:53:04 14 questionable. And if you both agree, those persons can be
10:53:08 15 cut. But you have to agree on them.

10:53:11 16 All right. Thank you.

10:53:12 17 (Open Court, prospective jury panel present)

10:53:23 18 THE COURT: Ladies and gentlemen of the jury panel,
10:53:25 19 at this time I'm going to give you a recess while we take up
10:53:28 20 things with the lawyers which involve selecting the eight of
10:53:32 21 you that will ultimately try this case. Now, when I give you a
10:53:36 22 recess, it's going to be until 11:30. So you'll have a little
10:53:43 23 time. So you can wander around a little bit. But be back out
10:53:45 24 in the hallway in front of this courtroom a little before
10:53:50 25 11:30. Don't come into the courtroom until you're invited in

10:53:54 1 by either one of the clerk's personnel or by the court security
10:53:58 2 officer. So just gather in the hallway a couple of minutes
10:54:02 3 before 11:30.

10:54:03 4 Now, it's like school. Look to your right; look to
10:54:07 5 your left; know who your neighbor is, because you need to be
10:54:11 6 seated when you come back in in the same seats you are now. So
10:54:16 7 if you haven't already gotten to know your neighbor this
10:54:19 8 morning, know them now, because when you come back in, sit
10:54:23 9 where you are now.

10:54:24 10 Now, there are three of you that need to remain
10:54:27 11 briefly before you get your recess, but it won't be long:
10:54:32 12 Juror number 5, Ms. Rowe; juror number 8, Mr. Parsley; and
10:54:38 13 juror number 10, Mr. Spikes, if you would stay in your seats
10:54:41 14 for a short period of time. The rest of you are in recess
10:54:45 15 until 11:30.

10:54:47 16 (Open Court, no jury)

10:55:29 17 THE COURT: Now, y'all didn't do anything wrong. We
10:55:31 18 just have a couple of extra questions for you. So let me see
10:55:35 19 the lawyers at the bench. And, Ms. Rowe, will you come forward
10:55:39 20 to the side of the bench also at this time.

10:55:41 21 (At the bench, on the record)

10:55:54 22 THE COURT: Now, while you are up here, you're going
10:55:56 23 to have to speak right into this microphone here.

10:55:59 24 All right, Mr. Deats, do you have additional
10:56:02 25 questions of this juror? And you need to speak into the

10:56:05 1 microphone, too.

10:56:06 2 MR. DEATS: Yeah. Ms. Rowe, I'm sorry to pry a
10:56:09 3 little bit like this. But did you make a contact to one of the
10:56:13 4 defendant's attorney's last night via LinkedIn?

10:56:20 5 JUROR ROWE: No.

10:56:21 6 MS. KNEELAND: I received -- I don't know if it was
10:56:23 7 last night or over the weekend a friend request from an
10:56:26 8 Angela Rowe.

10:56:28 9 JUROR ROWE: Oh, that's weird. I'm not even on
10:56:30 10 LinkedIn.

10:56:30 11 MS. KNEELAND: Okay. It was just in an abundance of
10:56:32 12 caution, I felt the need to tell. I assume your name is not
10:56:36 13 the most uncommon name in the world.

10:56:38 14 JUROR ROWE: No. It is not the most uncommon.

10:56:40 15 THE COURT: All right. Very good. Any other
10:56:41 16 questions?

10:56:41 17 MR. DEATS: No, Your Honor.

10:56:42 18 THE COURT: Any other from the City?

10:56:43 19 MR. COPPOLA: No, Your Honor.

10:56:43 20 THE COURT: All right. Ms. Rowe, you may be in
10:56:47 21 recess until 11:30.

10:56:49 22 JUROR ROWE: Okay. Thank you.

10:56:50 23 THE COURT: Mr. Parsley, please come forward.

10:56:52 24 This is kind of interesting. Now, if you'd gotten
10:56:56 25 one from a Lee Yeakel, you would have known. There's none

10:56:59 1 other of us around.

10:57:01 2 MS. KNEELAND: Me too. So ...

10:57:05 3 THE COURT: All right. Come forward, Mr. Parsley,
10:57:06 4 and you need to speak right into this microphone.

10:57:12 5 Mr. Coppola?

10:57:12 6 MR. COPPOLA: Mr. Parsley, I'm wondering, based on
10:57:15 7 what you've heard today and the questions that have been asked
10:57:18 8 of you and your responses, is there any reason that you can't
10:57:20 9 be an impartial juror in this case?

10:57:23 10 JUROR PARSLEY: I honestly cannot be impartial in
10:57:25 11 this case. I feel very strongly about sticking to your
10:57:28 12 original agreements.

10:57:30 13 THE COURT: All right. Mr. Deats?

10:57:31 14 MR. DEATS: I don't have anything further,
10:57:32 15 Your Honor.

10:57:33 16 THE COURT: All right. You may be in recess until
10:57:35 17 11:30.

10:57:37 18 JUROR PARSLEY: Okay.

10:57:37 19 THE COURT: And Mr. Spikes?

10:57:51 20 JUROR SPIKES: Yes, sir.

10:57:52 21 THE COURT: All right. Mr. Deats, do you have any
10:57:53 22 further questions of this -- and you're going to have to speak
10:57:57 23 into this microphone.

10:57:57 24 JUROR SPIKES: Okay.

10:57:59 25 MR. DEATS: Mr. Spikes, during my voir dire, you

10:58:01 1 spoke up on a couple of matters, I believe, specifically with
10:58:04 2 regards to expert witnesses. And I think you also talked some
10:58:07 3 about giving more credence to documentary evidence, perhaps.

10:58:11 4 Given the way that you feel about these things, do
10:58:14 5 you feel that it might affect your ability to be fair and
10:58:17 6 impartial to the plaintiffs in this case because you feel the
10:58:21 7 way you feel?

10:58:22 8 JUROR SPIKES: No.

10:58:23 9 MR. DEATS: Okay. Are you sure -- do you feel
10:58:25 10 confident, then, that you can be fair and impartial to the
10:58:28 11 plaintiffs and that you won't, for example, give more credence
10:58:33 12 to the testimony just because it comes from an expert rather
10:58:36 13 than a plaintiff or something like that.

10:58:37 14 JUROR SPIKES: Well, yes. I would give an expert
10:58:40 15 more credence. Yes.

10:58:41 16 THE COURT: Well, let me ask you this question: I'm
10:58:45 17 going to instruct you that you are to weigh an expert's
10:58:49 18 testimony as you would any other witness's testimony with
10:58:53 19 regard to the expert's credibility and demeanor and with what
10:58:58 20 the expert says.

10:59:00 21 An expert is merely someone who is allowed to draw
10:59:04 22 conclusions because they have a particular area of expertise.
10:59:07 23 A juror is not bound to follow the testimony of an expert any
10:59:11 24 more than a juror is bound to follow the testimony of anyone
10:59:14 25 else. What you are required to do as a juror is to weigh that

10:59:20 1 testimony in the same manner you would weigh any other
10:59:22 2 testimony.

10:59:23 3 Would you be able to do that, or would your position
10:59:26 4 be, merely because I have allowed a person to testify as an
10:59:30 5 expert, you automatically give that person's testimony more
10:59:35 6 weight and would give it more weight before you even hear it
10:59:39 7 and weigh it than you would the testimony of somebody else?
10:59:42 8 That's where the issue is.

10:59:44 9 JUROR SPIKES: I guess it depends on the topic at
10:59:50 10 hand. If we're talking about the law, then I would be looking
10:59:53 11 at a lawyer to give me, you know, an expert response in regards
10:59:58 12 to the law. But in regards to a person's personal opinion on
11:00:02 13 things, as I've dealt with as a manager, I'm usually going to
11:00:06 14 give -- only give that -- their statement credence if they can
11:00:12 15 support it with fact. I guess it depends on how it's being
11:00:16 16 applied.

11:00:17 17 THE COURT: The crux of the matter is you would have
11:00:22 18 to base your decision as a juror solely on what you hear in the
11:00:25 19 courtroom based on the exhibits and the testimony and what
11:00:31 20 weight you give that. If one party or the other called an
11:00:39 21 expert, would that party be ahead or behind in your eyes before
11:00:44 22 you ever hear the expert's testimony?

11:00:46 23 JUROR SPIKES: No, sir. If facts were provided in
11:00:47 24 support of other things in contradiction to that, then no.

11:00:51 25 THE COURT: So other testimony could offset an

11:00:53 1 expert's testimony in your mind if -- if it was justified?

11:00:57 2 JUROR SPIKES: Yes.

11:00:58 3 THE COURT: Mr. Coppola?

11:00:59 4 MR. COPPOLA: I don't have any questions, Your Honor.

11:01:00 5 THE COURT: Mr. Deats, anything further?

11:01:02 6 MR. DEATS: But the judge's question -- I want to

11:01:05 7 make sure that you understood this. When the expert takes the

11:01:09 8 stand, because they are labeled an expert, do you automatically

11:01:12 9 give more credence to that testimony than you would to someone

11:01:15 10 who is just testifying as a lay witness?

11:01:20 11 JUROR SPIKES: Yes.

11:01:21 12 MR. DEATS: Okay.

11:01:25 13 THE COURT: Anything further?

11:01:26 14 MR. COPPOLA: Mr. Spikes, would you be able to follow

11:01:28 15 the judge's instructions on how you should evaluate the

11:01:32 16 expert's testimony?

11:01:32 17 JUROR SPIKES: Yes.

11:01:33 18 THE COURT: All right. Now, this is important, if

11:01:34 19 you would follow my instructions. And here is what I'm going

11:01:42 20 to ask you: The moment the party, the expert takes the stand,

11:01:45 21 before you have heard any evidence or looked at that expert and

11:01:50 22 determined whether he was telling the truth or she was telling

11:01:53 23 the truth or whether she knew what he was talking about or

11:01:56 24 anything of that nature, would that person have more

11:02:00 25 credibility than just any other witness?

11:02:05 1 JUROR SPIKES: Credibility? Based on being an
11:02:09 2 expert, probably. But, again, it would be based upon, you
11:02:14 3 know, the substantive facts at the hand and also your guidance
11:02:18 4 to the jury.

11:02:20 5 THE COURT: All right. Anything further?

11:02:21 6 MR. COPPOLA: Nothing.

11:02:23 7 THE COURT: Anything further?

11:02:24 8 MR. DEATS: No, Your Honor.

11:02:24 9 THE COURT: All right. You may be in recess until
11:02:27 10 11:30.

11:02:51 11 (Open Court, no jury)

11:02:51 12 THE COURT: All right. I will start with the
11:02:52 13 plaintiff. Mr. Deats, do you have any challenges for cause?

11:02:55 14 MR. DEATS: Your Honor, I'm going to challenge juror
11:02:57 15 number 8, Donald Parsley, for cause. I believe he's indicated
11:03:01 16 quite clearly that he cannot be unbiased and he brings some
11:03:06 17 prejudices into the case. And I believe he should be struck for
11:03:08 18 cause.

11:03:09 19 THE COURT: Mr. Coppola?

11:03:10 20 MR. COPPOLA: I don't have any objection, Your Honor.

11:03:11 21 THE COURT: All right. Then juror number 8,
11:03:20 22 Mr. Parsley, the challenge for cause is granted. Now,
11:03:22 23 Mr. Parsley will come back in with the rest of the jurors. He
11:03:25 24 will just not be in your strike range. That will be true of
11:03:28 25 all of the ones. I'm not going to bring them in and tell them

11:03:31 1 they're gone and, therefore, create a whole lot of questions
11:03:34 2 with other jurors. So all right. Mr. Deats, anyone else to
11:03:37 3 challenge for cause?

11:03:38 4 MR. DEATS: Your Honor, I also move to strike juror
11:03:41 5 number 10, Brent Spikes, for cause. I believe that he's
11:03:44 6 indicated fairly clearly now that an expert's testimony will be
11:03:47 7 given more weight in his opinion than testimony of other
11:03:51 8 persons and that they automatically get a leg up by being
11:03:54 9 labeled an expert. And I believe he should be struck for cause
11:03:57 10 on that basis.

11:03:58 11 THE COURT: Mr. Coppola?

11:03:59 12 MR. COPPOLA: Your Honor, I think Mr. Spikes
11:04:01 13 indicated pretty clearly as well he would be able to follow
11:04:04 14 your instructions on the matter and that he would in fact
11:04:07 15 consider all of the facts that the expert presents to determine
11:04:10 16 whether or not that expert's testimony should be given credence
11:04:15 17 or should be -- the weight to assign to the expert's testimony.

11:04:18 18 THE COURT: Mr. Deats, your challenge. You get the
11:04:21 19 last word.

11:04:22 20 MR. DEATS: Your Honor, again, he made those
11:04:26 21 statements. But then when given the opportunity to backtrack,
11:04:29 22 he clearly backtracked on that and said that at the moment they
11:04:32 23 take the stand, they have more credence simply because they are
11:04:35 24 an expert. I do believe he disqualified himself.

11:04:38 25 THE COURT: I agree with the plaintiffs on this one.

11:04:40 1 The challenge for cause as to juror number 10, Mr. Spikes, is
11:04:43 2 sustained. Mr. Deats, anything further?

11:04:47 3 MR. DEATS: Your Honor, I believe that that is all of
11:04:50 4 the challenges that we have for cause.

11:04:52 5 THE COURT: All right. Mr. Coppola was -- tell me,
11:04:56 6 is it *Coe-pola* or *Cau-pola*?

11:04:56 7 MR. COPPOLA: *Coe-pola*, Your Honor.

11:04:58 8 THE COURT: Coppola. Okay. You make the wine.

11:05:00 9 MR. COPPOLA: Yes, Your Honor. That's right. Movies
11:05:03 10 and the wine.

11:05:03 11 THE COURT: That's good. We'll make sure we get this
11:05:05 12 wrong. I apologize if I butchered your name. Being the victim
11:05:09 13 of that often, I have great sympathy for it.

11:05:12 14 Does the City have any challenges for cause?

11:05:14 15 MR. COPPOLA: Ms. Kneeland is going to make them, if
11:05:16 16 that's okay, Your Honor.

11:05:17 17 THE COURT: Yes. That's fine.

11:05:19 18 MS. KNEELAND: Yes. Judge *Yee-kel*, Ms. *Ka-nee-land*
11:05:23 19 here.

11:05:24 20 We would like to challenge -- the City would like to
11:05:25 21 challenge juror 11, Mr. Quijano. He was pretty clear that he
11:05:29 22 had filed his lawsuit against his employer, wasn't paid
11:05:33 23 overtime, and absolutely could not be fair in an overtime
11:05:36 24 issue.

11:05:38 25 THE COURT: Mr. Deats?

11:05:42 1 MR. DEATS: Your Honor, regretfully, I have to
11:05:45 2 agree. I think he did indicate that.

11:05:47 3 THE COURT: All right. The challenge is sustained.

11:05:53 4 Juror number 11, Mr. Quijano, will not be in your strike range.

11:05:56 5 MS. KNEELAND: Also the City moves to strike juror 7,
11:05:59 6 Maria Calero. She testified -- or she voir dire --

11:06:04 7 THE COURT: What was her seat number? Juror
11:06:07 8 number 16.

11:06:09 9 MS. KNEELAND: Sorry. Number 16. I looked at the
11:06:11 10 wrong number. She testified that she has a lot of very
11:06:15 11 positive experiences with EMS, that they practically lived at
11:06:19 12 her house for some time, and that she would not be able to set
11:06:21 13 aside her sympathies with the people who worked on her and who
11:06:24 14 worked with them.

11:06:25 15 THE COURT: Mr. Deats?

11:06:26 16 MR. DEATS: Your Honor, I do tend to disagree with
11:06:30 17 that one. I think that she did indicate she had a lot of
11:06:33 18 sympathy for EMS employees. I think that that tends to cut
11:06:36 19 both ways. I think she has a good impression about the EMS
11:06:38 20 generally and the service they provide. I did not hear any
11:06:41 21 testimony that indicated that she could not be fair and
11:06:44 22 impartial in terms of evaluating the evidence.

11:06:47 23 THE COURT: You have no concern that she's an
11:06:49 24 employee of the City?

11:06:52 25 MR. DEATS: Your Honor, if we're talking about juror

11:06:56 1 number 16, I believe that she said she was a former employee of
11:06:58 2 the City.

11:06:59 3 THE COURT: Well, that's right. She was formerly
11:07:01 4 employed by the City.

11:07:02 5 MR. DEATS: Yes, sir. And no, sir. I do not have a
11:07:04 6 concern about that.

11:07:09 7 MS. KNEELAND: She also did say that they are, quote,
11:07:13 8 awesome. I just think she has a substantial amount of
11:07:18 9 prejudice in favor of the EMS employees.

11:07:21 10 THE COURT: I will overrule the challenge for cause
11:07:24 11 on Ms. Calero. She does have sympathy, but I think she
11:07:29 12 indicated she would listen to the evidence and decide on that
11:07:32 13 basis. So the objection on challenge for cause on juror
11:07:37 14 number 7 is denied.

11:07:40 15 MR. DEATS: Your Honor, I'm sorry to interrupt, but I
11:07:42 16 think you're talking about juror number 16.

11:07:45 17 THE COURT: Juror number 16. You got me saying it.
11:07:48 18 You dragged me into it now.

11:07:50 19 MS. KNEELAND: Hopefully it will be the only thing
11:07:52 20 that I will drag you into, Your Honor.

11:07:55 21 THE COURT: Oh, we've got a long way to go.

11:07:57 22 MS. KNEELAND: The City would also like to challenge
11:07:59 23 juror number 6, Alma Schell. She testified -- or she
11:08:05 24 voir dired that she has had positive experiences with EMS.
11:08:12 25 She's very sympathetic to them. She also says that she

11:08:17 1 believes that they cannot ever be supervisors if they, quote,
11:08:23 2 always have to be ready and prepared. And that's going to be a
11:08:27 3 pretty prejudicial point of view from the City's perspective.

11:08:31 4 THE COURT: Mr. Deats.

11:08:32 5 MR. DEATS: Your Honor, with regards to Ms. Schell, I
11:08:34 6 mean, that -- that's an issue in contention between the
11:08:37 7 parties, you know, whether the fact that they have to be on
11:08:40 8 call 24 hours a day is an important factor. The fact that she
11:08:43 9 feels that it is, I don't think means that she's necessarily
11:08:47 10 bias. And so we would oppose the strike.

11:08:50 11 THE COURT: Ms. Kneeland.

11:08:51 12 MS. KNEELAND: I forgot. She also said that she was
11:08:54 13 talking about this with one of her best friends, and she
11:08:58 14 believed that she can't be fair. That was in response to one
11:09:01 15 of your very first questions.

11:09:03 16 THE COURT: I studied Ms. Schell carefully. She gave
11:09:06 17 numerous answers to numerous questions by the Court, by the
11:09:10 18 plaintiff, by the defendant which indicate to me that she has a
11:09:15 19 very strong opinion about this case. I do not find she can be
11:09:21 20 fair and impartial. I sustain the challenge for cause on
11:09:24 21 Ms. Schell.

11:09:31 22 MS. KNEELAND: The City also challenges the juror in
11:09:33 23 seat 24, Ms. Sheldon. She is a clerk of the Court -- for JP
11:09:38 24 Courts 1 and 2, Coryell County. She said that she didn't think
11:09:42 25 she could be fair because of prior experience she had because

11:09:45 1 her husband is a police officer and there's no way that a job
11:09:49 2 description or policies and procedures could in any way
11:09:55 3 encompass all of the job duties that he has to do. And so I
11:09:59 4 think she would not be able to be fair in this case.

11:10:03 5 THE COURT: Ms. Demmings, did we satisfy ourselves
11:10:06 6 that Ms. Sheldon resides in our district?

11:10:09 7 THE CLERK: Oh, yes.

11:10:10 8 THE COURT: Even though she's a clerk in Coryell
11:10:12 9 County? Because Coryell County is not in the Austin Division.

11:10:16 10 THE CLERK: It is.

11:10:16 11 THE COURT: Coryell is not Austin. Coryell is in the
11:10:19 12 Waco Division.

11:10:20 13 THE CLERK: Oh.

11:10:20 14 MS. KNEELAND: Her juror questionnaire indicates that
11:10:22 15 she resides in Lampasas County where her husband is a police
11:10:26 16 officer.

11:10:26 17 THE CLERK: Yes. That's right.

11:10:27 18 THE COURT: Mr. Deats, response to Ms. Sheldon?

11:10:29 19 MR. DEATS: Your Honor, I don't think we oppose that
11:10:31 20 one.

11:10:31 21 THE COURT: All right. Then the challenge for cause
11:10:33 22 as to Ms. Sheldon is sustained. Anything further,
11:10:36 23 Ms. Kneeland.

11:10:41 24 MS. KNEELAND: If I could read my writing, I think I
11:10:43 25 do have something further. Let me just compare for a moment,

11:10:47 1 Your Honor, please.

11:11:03 2 We also -- the City would also challenge the juror in
11:11:06 3 seat number 3, Ms. Basinger. She had a claim against her
11:11:10 4 employer for unemployment and they wouldn't pay her. I think
11:11:14 5 she would not be disposed to be fair toward employers and
11:11:18 6 nonpayment of any kind.

11:11:21 7 THE COURT: Mr. Deats?

11:11:22 8 MR. DEATS: Your Honor, we do oppose that. I don't
11:11:24 9 believe she testified in any way that she would be unfair and
11:11:27 10 impartial in this case. The simple fact that she had a prior
11:11:30 11 claim against an employer years ago doesn't make her an unfair
11:11:34 12 or partial juror towards the plaintiffs, and we would oppose
11:11:37 13 that strike.

11:11:38 14 THE COURT: Ms. Kneeland, you get the last word.

11:11:47 15 MS. KNEELAND: That's all I have on that one.

11:11:48 16 THE COURT: All right. The challenge for cause will
11:11:51 17 be denied. Even though she had that in her background, she did
11:11:55 18 not indicate at any time that she could not put it behind her
11:12:00 19 and reach a fair and impartial decision in this case.

11:12:04 20 Any other challenges for cause from the City?

11:12:08 21 MS. KNEELAND: The city also challenges the juror in
11:12:16 22 seat 26 for cause. She is a TWC worker. She does unemployment
11:12:28 23 claims. She has an awful lot of legal experience. Despite the
11:12:31 24 fact that she said she could put her experiences behind her,
11:12:35 25 she seemed to have her mind made up on an awful lot of things

11:12:39 1 when she was specifically voir dire, and we don't think she
11:12:45 2 can be fair to the City.

11:12:46 3 THE COURT: Mr. Deats?

11:12:47 4 MR. DEATS: Your Honor, I did hear her testify that
11:12:48 5 she had a lot of legal experience. I don't know how much this
11:12:51 6 matters because it doesn't look like we're going to get down
11:12:53 7 that far in the panel, given that we each have three
11:12:57 8 peremptories. But I don't think I heard anything that
11:12:58 9 indicated she could be less than fair and impartial.

11:13:02 10 THE COURT: Ms. Kneeland?

11:13:04 11 MS. KNEELAND: I rest on what I have there.

11:13:06 12 THE COURT: All right. The challenge will be
11:13:08 13 denied. I did not hear her -- even though she is a lawyer,
11:13:13 14 even though she has a legal background, even though she has
11:13:16 15 knowledge of legal issues which could involve this case, she
11:13:19 16 indicated no prejudice. And lawyers are not barred by law from
11:13:23 17 serving on juries. Any other challenges for cause?

11:13:28 18 MS. KNEELAND: One last. The juror in seat 14,
11:13:32 19 Ms. Ontiberos. She indicated that she would be partial to
11:13:37 20 EMS. She said specifically the word "partial." She also slept
11:13:43 21 through about a third of the selection, so I don't think she
11:13:45 22 would be a fair juror for either party.

11:13:48 23 THE COURT: Mr. Deats?

11:13:50 24 MR. DEATS: Your Honor, I'm looking at my notes real
11:13:53 25 hastily. I see that she's the owner of her own business.

11:13:55 1 She's had complaints filed against her. Her sister is a
11:13:59 2 nurse. She did say that EMS saves lives. But I didn't hear
11:14:03 3 her say anything in that that would cut more towards the
11:14:05 4 plaintiffs than the employer, EMS. And so I would ask that
11:14:10 5 this challenge be denied.

11:14:11 6 THE COURT: Ms. Kneeland?

11:14:12 7 MS. KNEELAND: She specifically said the word, that
11:14:14 8 she would be partial to EMS.

11:14:17 9 THE COURT: Yes, she did. And I will sustain the
11:14:27 10 challenge for cause as to juror number 14, Ms. Ontiberos.

11:14:35 11 MS. KNEELAND: Since I said that would be my last
11:14:37 12 one, I'll stick to my word, Your Honor.

11:14:38 13 THE COURT: That's good. That's a good precedent to
11:14:41 14 start in a trial.

11:14:42 15 All right. I really did not note anyone that we have
11:14:52 16 not already talked about that I thought indicated that they
11:14:54 17 were going to have a hard time serving on this jury or that I
11:14:59 18 thought might become a loose cannon. Mr. Deats, I start with
11:15:03 19 you. Do you have anybody so noted that you would like to bring
11:15:09 20 up?

11:15:09 21 MR. DEATS: No, Your Honor. I think we've covered
11:15:11 22 the ones that -- we're still on the ...

11:15:14 23 THE COURT: Well, this is just the voluntary thing.
11:15:17 24 We're through with challenges for cause.

11:15:18 25 MR. DEATS: Yes, sir.

11:15:20 1 MR. COPPOLA: No, Your Honor. I don't think there's
11:15:21 2 anybody else that falls into that category.

11:15:23 3 THE COURT: All right. Then if I have counted
11:15:38 4 correctly -- and check me on this -- the last juror on your
11:15:41 5 strike range would be Warren James, seat 19. Mr. Deats, do you
11:15:47 6 concur?

11:15:48 7 MR. DEATS: Yes, Your Honor. That's my count as
11:15:50 8 well.

11:15:51 9 THE COURT: And, Mr. Coppola, Ms. Kneeland, do you
11:15:53 10 concur?

11:15:53 11 MR. COPPOLA: Yes, Your Honor. That matches our
11:15:55 12 count.

11:15:55 13 THE COURT: All right. Then don't strike anybody
11:15:58 14 beyond that. I think you should be able to get your strikes
11:16:06 15 made in 15 minutes. So I'll be back at 11:30. We'll still
11:16:09 16 have the jurors out. Ms. Demmings, don't bring them in until I
11:16:13 17 am. When you've stricken your list, give them to Ms. Jones,
11:16:16 18 who will bring them to me. And then we'll be in about 11:30,
11:16:21 19 get the jury in the box and give them preliminary instructions,
11:16:25 20 and then we will recess for the noon hour. So Court's in
11:16:29 21 recess.

11:16:30 22 (Recess)

11:32:26 23 (Open Court, no jury)

11:32:26 24 THE COURT: Let the record reflect it's now about
11:32:28 25 11:33. All of the jury panel, the prospective jurors, are

11:32:38 1 absent from the courtroom. Have the lawyers had an opportunity
11:32:41 2 to review one another's strike list?

11:32:42 3 MR. COPPOLA: Yes, Your Honor.

11:32:43 4 MR. DEATS: Yes, Your Honor.

11:32:44 5 THE COURT: All right. Are you satisfied as to who
11:32:46 6 the six are who will comprise your jury?

11:32:48 7 MR. DEATS: I'm sorry. You mean the eight,
11:32:49 8 Your Honor?

11:32:49 9 THE COURT: The eight. I'm sorry.

11:32:52 10 MR. DEATS: Yes, sir.

11:32:53 11 MR. COPPOLA: Yes, Your Honor.

11:32:54 12 THE COURT: All right. Do we have any other
11:33:03 13 questions or challenges before the jury is brought in and
11:33:06 14 seated? Any *Batson* challenges or anything of that nature?

11:33:10 15 MR. DEATS: Your Honor, I have no *Batson* challenges.

11:33:12 16 MR. COPPOLA: No, Your Honor.

11:33:13 17 THE COURT: All right. Thing bring in the jury
11:33:15 18 panel, please.

11:34:11 19 (Open Court, prospective jury panel present)

11:34:11 20 THE COURT: All right. Ladies and gentlemen of the
11:34:20 21 jury panel, welcome back. We have completed our work.

11:34:24 22 Ms. Jones, would you please read the names of those to be
11:34:29 23 impaneled as jurors here this morning. And as your name is
11:34:34 24 called, will you come through the gate and through the well of
11:34:37 25 the courtroom and around over here to my left, where

11:34:39 1 Mr. Menefee, the court security officer, is and he will seat
11:34:42 2 you.

11:34:43 3 Ms. Jones?

11:34:44 4 THE CLERK: The first juror is Ashley -- I mean,
11:34:47 5 Shirley Ashbrook. Number 2 is Milan Matic. Number 3 is
11:34:57 6 Arnulfo Flores. Number 4 is Mark Ferguson. Number 5 is
11:35:05 7 Scott Talkington.

11:35:07 8 THE COURT: Come on. All of you look happy about
11:35:09 9 this. Quit looking so glum when your names are called. The
11:35:12 10 rest of you don't look so received when somebody next to you
11:35:16 11 gets up.

11:35:17 12 THE CLERK: Number 6, Andrea Petit. Number 7,
11:35:23 13 Thomas Neff. And, number 8, Warren James.

11:35:33 14 THE COURT: For the remaining members of the jury
11:35:51 15 panel this morning: Let me once again thank you for being here
11:35:54 16 and being present today. Your role, even though you were not
11:35:59 17 selected for the jury, is every bit as important as those --
11:36:03 18 that of those persons who were selected for the jury because
11:36:07 19 only if we call more jurors than we need are we able to get a
11:36:16 20 jury that is satisfactory to both parties and, under our
11:36:20 21 system, a jury of their peers. And I know I speak for the
11:36:23 22 parties and their attorneys when I thank you for your time and
11:36:26 23 patience today.

11:36:32 24 With that, you are excused. If your service is
11:36:35 25 needed during this term of court, the clerk's office will

11:36:38 1 contact you. So you're not totally free, and you might get
11:36:41 2 recalled. If you have not voted, please vote this afternoon or
11:36:45 3 tomorrow. Again, thank you for your service, and you are
11:36:47 4 excused.

11:37:18 5 (Prospective jurors excused)

11:37:18 6 THE COURT: Will the members of the jury please stand
11:37:19 7 and raise your right hands. And, Ms. Jones, would you please
11:37:23 8 administer the oath as jurors.

11:37:26 9 (Jury panel sworn)

11:37:47 10 THE COURT: Please be seated.

11:37:53 11 Members of the jury, now that you have been sworn, I
11:37:56 12 will give you some preliminary instructions to guide you in
11:37:59 13 your participation in the trial. It will be your duty to find
11:38:03 14 from the evidence what the facts are you. You and you alone
11:38:08 15 are the judges of the facts. You will then have to apply those
11:38:13 16 facts to the law as the Court will give it to you. You must
11:38:17 17 follow the law whether you agree with it or not.

11:38:21 18 Nothing the Court may say or do during the course of
11:38:24 19 the trial is intended to indicate, nor should it be taken by
11:38:29 20 you as indicating, what your verdict should be.

11:38:33 21 The evidence from which you will find the facts will
11:38:36 22 consist of, one, the testimony of witnesses; two, written
11:38:40 23 documents and other things received into the record as
11:38:44 24 exhibits; three, any facts the lawyers agree or stipulate to or
11:38:49 25 that the Court may instruct you to find; and, four, any

11:38:53 1 applicable presumptions.

11:38:56 2 Certain things are not evidence and must not be
11:38:59 3 considered by you. I will list them for you now.

11:39:03 4 One, statements, arguments, and questions by lawyers
11:39:06 5 are not evidence;

11:39:08 6 Two, objections to questions are not evidence.

11:39:12 7 Lawyers have an obligation to their client to make an objection
11:39:19 8 when they believe evidence that being offered is improper under
11:39:22 9 rules of evidence. You should not be influenced by the
11:39:25 10 objection or by the Court's ruling on it. If the objection is
11:39:28 11 sustained, ignore the question. If the objection is overruled,
11:39:32 12 treat the answer like any other. If you are instructed that
11:39:36 13 some item of evidence is received for a limited purpose only,
11:39:40 14 you must follow that instruction, whatever it may be;

11:39:44 15 Three, testimony that the Court has excluded or told
11:39:48 16 you to disregard is not evidence and must not be considered;

11:39:52 17 Four, anything you may have seen or heard outside the
11:39:56 18 courtroom is not evidence and must be disregarded. You are to
11:40:01 19 decide the case solely on the evidence presented here in this
11:40:04 20 courtroom.

11:40:05 21 There are two kinds of evidence, direct and
11:40:12 22 circumstantial. Direct evidence is direct proof of a fact,
11:40:14 23 such as the testimony of an eyewitness. Circumstantial
11:40:18 24 evidence is proof of facts from which you may infer or conclude
11:40:22 25 that other facts exist. I will give you further instructions

11:40:27 1 on these as well as other matters at the end of the case, but
11:40:31 2 have in mind that you may consider both kinds of evidence; that
11:40:34 3 is, both direct and circumstantial evidence.

11:40:40 4 It is up to you to decide which witnesses to believe,
11:40:43 5 which witnesses not to believe, and how much of any witness's
11:40:46 6 testimony to accept or reject. I will give you some guidelines
11:40:53 7 for determining the credibility of witnesses at the end of the
11:40:55 8 case.

11:40:56 9 Now, a few words to you about your conduct as
11:40:58 10 jurors. Keep an open mind during the trial and give careful
11:41:03 11 attention to the testimony and evidence presented for your
11:41:09 12 consideration during the trial. Although exhibits which I
11:41:11 13 admit into evidence during the course of the trial will be
11:41:14 14 available to you for your inspection and review during your
11:41:18 15 deliberations on the verdict, under normal circumstances, no
11:41:21 16 written transcript of the testimony of witnesses can be made
11:41:26 17 available to you for your review during your deliberations.
11:41:30 18 Nor under normal circumstances can all or any significant
11:41:35 19 portion of a witness's testimony be read to you once you
11:41:38 20 commence your deliberations.

11:41:40 21 It is therefore very important that you pay strict
11:41:42 22 attention to the testimony given by each witness during the
11:41:46 23 trial of the case. Do not decide any fact or form or express
11:41:53 24 any opinion about the case one way or the other until you have
11:41:57 25 heard all of the evidence and have had the benefit of the

11:42:01 1 closing arguments of the lawyers and my instructions on the
11:42:05 2 applicable law.

11:42:06 3 During the trial you must not discuss the case in any
11:42:10 4 manner among yourselves or with anyone else, and you must not
11:42:14 5 permit anyone to attempt to discuss it with you or in your
11:42:18 6 presence. And, insofar as the lawyers are concerned, as well
11:42:21 7 as others within whom you may come in contact or with whom you
11:42:26 8 may recognize as having some connection with the case, you are
11:42:29 9 instructed that in order to avoid even the appearance of
11:42:33 10 impropriety, you should have no conversation, whatever, with
11:42:37 11 those persons while you are serving on the jury.

11:42:40 12 After you retire to deliberate, you may begin
11:42:44 13 discussing the case with your fellow jurors, but you cannot
11:42:48 14 discuss the case with anyone else until you have returned a
11:42:52 15 verdict and the case is at an end.

11:42:54 16 I hope that for all of you this case is interesting
11:42:57 17 and noteworthy. I know that many of you use cell phones,
11:43:02 18 Blackberries, the Internet, and other tools of technology. You
11:43:07 19 must not talk to anyone about this case or use these tools to
11:43:11 20 communicate electronically with anyone about the case. This
11:43:15 21 includes your family and friends.

11:43:18 22 You may not communicate with anyone about the case on
11:43:21 23 your cell phone, your E-mail, BlackBerry, iPhone, text
11:43:26 24 messaging or on Twitter or any blog or Web site, any Internet
11:43:31 25 chat room, or by way of any social networking Web sites,

11:43:35 1 including Facebook, Myspace, LinkedIn, and YouTube.

11:43:40 2 Now, Mr. Menefee is our court security officer, whom

11:43:44 3 you will get to know during this case. He looks like a nice

11:43:47 4 man. Do not be fooled. If he sees you trying to communicate

11:43:51 5 with anyone on any of the devices I have mentioned about this

11:43:54 6 case, he will take it from you in your presence and throw it to

11:43:58 7 the ground and stop it into small pieces. He will do that

11:44:02 8 because I have instructed him to do that.

11:44:04 9 There are problems around the country with people

11:44:06 10 trying to communicate about a case when they are on juries. We

11:44:10 11 have not had a problem here, and we do not want to have a

11:44:13 12 problem. So understand that.

11:44:15 13 Nor may you attempt to conduct any independent

11:44:19 14 investigation concerning this case. You must avoid reading any

11:44:23 15 newspaper articles that might be published about the case now

11:44:26 16 that the trial is in progress, and you must avoid listening to

11:44:30 17 or observing any broadcast news program on either television or

11:44:35 18 radio because of the possibility that mention might be made of

11:44:39 19 this case during such a broadcast.

11:44:41 20 You may not consult dictionaries or reference

11:44:44 21 materials, search the Internet, Web sites, blogs or use any

11:44:49 22 electronic tool to obtain information about the case or to help

11:44:53 23 you to decide the case. Please do not try to find out

11:44:56 24 information from any source outside the confines of this

11:45:00 25 courtroom.

11:45:01 1 Now, the reason for this caution, of course, lies in
11:45:04 2 the fact that it will be your duty to decide the case solely on
11:45:08 3 the basis of the testimony and evidence presented here during
11:45:12 4 the trial, without consideration of any other matters
11:45:16 5 whatsoever.

11:45:19 6 From time to time during the trial, I may be called
11:45:22 7 upon to make rulings of law on motions or objections made by
11:45:25 8 lawyers. You should not infer or conclude from any ruling I
11:45:30 9 may make that I have any opinions on the merits of the case
11:45:34 10 favoring one side or the other. And if I sustain an objection
11:45:38 11 to a question that goes unanswered by the witness, you should
11:45:44 12 not speculate on what the answer might -- on what answer might
11:45:47 13 have been given, nor should you draw any inferences or
11:45:50 14 conclusions from the question itself.

11:45:53 15 During the trial it may be necessary for me to confer
11:45:56 16 with the lawyers from time to time out of your hearing
11:46:00 17 concerning questions of law or procedure that require
11:46:03 18 consideration by the Court alone. On some occasions you may be
11:46:09 19 excused from the courtroom as a convenience to you and to us
11:46:13 20 while I discuss such matters with the lawyers. We will try to
11:46:16 21 limit such interruptions as much as possible, but you should
11:46:19 22 remember at all times the importance of the matter you are here
11:46:22 23 to determine and you should be patient even though the case may
11:46:33 24 seem to go slowly.

11:46:35 25 Before we commence the trial, we will break for

11:46:38 1 lunch. But let me tell you what will occur when we come back.
11:46:41 2 The lawyers for each side will be given an opportunity to make
11:46:44 3 an opening statement in which they may explain the issues of
11:46:47 4 the case and summarize the facts they expect the evidence will
11:46:50 5 show.

11:46:50 6 First the attorney for the plaintiffs will make an
11:46:53 7 opening statement which, again, is simply an outline to help
11:46:57 8 you understand the evidence that the plaintiffs' attorneys
11:47:02 9 expects to introduce. Next the attorney for the defendant will
11:47:05 10 make an opening statement.

11:47:07 11 The plaintiffs will then present their witnesses, and
11:47:10 12 the lawyers for the defendant may cross-examine those
11:47:13 13 witnesses.

11:47:17 14 Following the plaintiff's case, the defendant may
11:47:19 15 present witnesses and the plaintiffs will have the opportunity
11:47:21 16 to cross-examine them.

11:47:23 17 Subsequently, rebuttal witnesses may be presented.

11:47:27 18 After all of the testimony and evidence has been
11:47:29 19 presented, the lawyers will then be given another opportunity
11:47:32 20 to address you and make summations, or final arguments, in the
11:47:36 21 case.

11:47:38 22 The statements the lawyers make at the beginning of
11:47:41 23 this case as well as the arguments they present at the end of
11:47:45 24 the trial are not to be considered by you either as evidence in
11:47:49 25 the case, which comes only from the witnesses and exhibits, or

11:47:54 1 as your instruction on the law, which will come only from me.

11:47:58 2 Nevertheless, these statements and arguments are

11:48:02 3 intended to help you determine the issues and the evidence as

11:48:04 4 it comes in as well as the positions taken by both sides.

11:48:09 5 Now, before I recess you for lunch, let me tell you a

11:48:13 6 few things about our work schedule so you may notify employers

11:48:17 7 or family members. We are going to recess today until 1:30 for

11:48:22 8 lunch. You should be back in your jury room a little before

11:48:26 9 1:30. And Mr. Menefee is going to show you where your jury

11:48:29 10 room is, and that is to where you will report each time.

11:48:34 11 We will work today until 5 o'clock, or as close to

11:48:37 12 5 o'clock as there is a reasonable stopping place in the

11:48:41 13 evidence. It might be a little before 5:00; it might be a

11:48:46 14 little after 5:00. But we will generally stop at about

11:48:48 15 5 o'clock.

11:48:50 16 And then for the remaining days of the trial, you

11:48:53 17 should be in your jury room a little before 9 o'clock because

11:48:58 18 we will start at 9:00, we will work until noon or as close to

11:49:02 19 noon as there is a convenient stopping point in the evidence,

11:49:06 20 and we will try to return each day at 1:30.

11:49:09 21 Although, as I mentioned during the voir dire

11:49:14 22 examination, all of the other cases I have do not stop because

11:49:17 23 I'm trying this one. So there may be times when I will have to

11:49:20 24 take up matters over the noon hour, and I may not have you back

11:49:24 25 until 2:00. But you will know when you recess at noon whether

11:49:28 1 you're coming back at 1:30 or 2:00, and it will -- we're going
11:49:31 2 to shoot for 1:30 every day. And then we will work until
11:49:34 3 5 o'clock or around 5 o'clock, where there is a convenient
11:49:41 4 stopping place in the evidence.

11:49:42 5 We will take a mid-morning recess of 15 minutes and a
11:49:46 6 mid-afternoon recess of 15 minutes. There will not ever be a
11:49:51 7 time when you will require -- be required to be seated in your
11:49:54 8 jury box for more than two hours. And so that's the schedule I
11:49:59 9 want to keep. So try to gauge what you drink to where you can
11:50:03 10 sit there for two hours.

11:50:04 11 As you may have noticed, the temperature in this
11:50:06 12 76-year-old courtroom does not stay constant. There are times
11:50:10 13 when we will start the case when you need to be in a heavy
11:50:14 14 coat. And by the middle of the afternoon, you will need to be
11:50:17 15 wearing shorts, and vice versa. It may start hot and end up
11:50:21 16 cold. We are hopeful that that will be one of things we get in
11:50:25 17 the new courthouse. So you might want to bring various
11:50:29 18 articles of clothing because I don't know what you're going to
11:50:32 19 need because, believe me, the powers of a federal judge are
11:50:36 20 greatly overrated. I cannot control the temperature in this
11:50:39 21 courtroom. That is your General Services Administration. So
11:50:43 22 you're going to have to deal appropriately with that.

11:50:47 23 The reason we will not generally start before 9:00 or
11:50:52 24 go after 5:00 is because I realize we have traffic problems in
11:50:57 25 Austin and some of you have distances to drive. If you're

11:51:01 1 getting tied up in traffic or something happens and you have a
11:51:04 2 cell phone, please try to contact the clerk's office and let us
11:51:08 3 know. Otherwise, we will be patient and wait for you to get
11:51:12 4 here. But try to be here a little before 9:00, and then we're
11:51:15 5 going to try to get you out of here by 5:00.

11:51:17 6 Now, before we recess, let me give you instructions
11:51:20 7 that you will hear a lot of as we go along. Well, let me say
11:51:24 8 one other thing because I knew this this morning. Friday will
11:51:28 9 be different. We will work until noon, and then we will recess
11:51:32 10 at noon on Friday and will not come back until 9 o'clock on
11:51:35 11 Tuesday because, as I said earlier, I have another matter I
11:51:38 12 have to attend to Friday afternoon that I couldn't reschedule
11:51:43 13 because of this trial and Monday is a federal holiday.

11:51:47 14 Now, I wouldn't mind working the lawyers on Monday
11:51:50 15 because they're getting paid for what they do. I wouldn't mind
11:51:53 16 working for me because I'm appointed for life. You get the
11:51:57 17 grand sum of whatever we pay you, so I wouldn't mind working
11:52:01 18 you. But the employees of this building do not get paid any
11:52:07 19 overtime. And so they cherish, as I do, these random federal
11:52:11 20 holidays, so that is why we will not work on Monday.

11:52:15 21 But that will give you a three and a half-day weekend
11:52:17 22 to try to catch up on the family matters or your business
11:52:21 23 matters because I know it is an imposition for you to serve on
11:52:25 24 a jury, and we are grateful.

11:52:27 25 Now, as we take our first break during the trial, let

11:52:30 1 me remind you of the instructions I just gave you. Until the
11:52:34 2 trial is over, do not discuss this case with anyone, including
11:52:38 3 your fellow jurors, members of your family, people involved in
11:52:41 4 the trial, or anyone else. If anyone approaches you and tries
11:52:45 5 to talk to you about the case, do not tell your fellow jurors,
11:52:49 6 but advise me about it immediately. And you may do that by
11:52:53 7 letting the court security officer, Mr. Menefee, know.

11:52:56 8 Do not read or listen to any news reports of the
11:52:59 9 trial. Do not observe any television broadcasts that may
11:53:03 10 contain information about this trial. Do not use any
11:53:07 11 electronic device whatsoever to gain information about this
11:53:11 12 case or transmit information about this case. And, finally,
11:53:15 13 remember to keep an open mind until all the evidence has been
11:53:18 14 received and you have heard the views of your fellow jurors.

11:53:21 15 If you need to speak with me about anything, simply
11:53:25 16 give a signed note to the court security officer to give to
11:53:31 17 me. Now, I may not repeat these things to you before every
11:53:35 18 break that we take, although I will try to. But keep all of
11:53:38 19 them in mind throughout the trial and act in accordance with
11:53:40 20 them during any breaks.

11:53:42 21 At this time you're in recess until 1:30. Be back in
11:53:45 22 your jury room a little bit before 1:30.

11:53:48 23 (Open Court, no jury)

11:54:12 24 THE COURT: All right. Ladies and gentlemen, what
11:54:14 25 we'll do when we come back at 1:30, we'll have the open

11:54:17 1 statements by the lawyers. You'll recall that we worked out
11:54:23 2 that you will each have 20 minutes to the side to open.
11:54:29 3 Immediately after the opening statements, I will read to the
11:54:33 4 jury your stipulated facts, and I will admit into evidence the
11:54:37 5 exhibits that you've agreed and have no objections to
11:54:41 6 admissibility. So when you commence your part of the trial,
11:54:45 7 you can presume those stipulated facts and exhibits are in
11:54:50 8 evidence.

11:54:51 9 Is there anything further that we need to take up at
11:54:56 10 this time before we recess?

11:54:58 11 MR. COPPOLA: Your Honor, in terms of reading
11:55:00 12 stipulations, the defendant has an exhibit, Exhibit 57, which
11:55:04 13 is a request -- Plaintiffs' answer to a request for admission,
11:55:08 14 which we would ask the Court to read to the jury as well.

11:55:12 15 THE COURT: Mr. Deats?

11:55:15 16 MR. DEATS: Your Honor, I -- that's rather unusual,
11:55:18 17 but I guess it's the -- is it the deal with the salary basis
11:55:23 18 issue?

11:55:24 19 MR. COPPOLA: Yes.

11:55:24 20 MR. DEATS: Okay.

11:55:25 21 THE COURT: All right. So that is exhibit -- let me
11:55:29 22 just make sure we're all on the same page -- Defendant's
11:55:35 23 Exhibit 57?

11:55:37 24 MR. COPPOLA: Yes, Your Honor. It's request for
11:55:38 25 admission number one.

11:55:44 1 THE COURT: You want me to read number one, or do you
11:55:47 2 want me to read the five admissions?

11:55:49 3 MR. COPPOLA: I want you to read the admission to
11:55:51 4 request for admission number one, Your Honor.

11:55:53 5 THE COURT: All right. Mr. Deats, it is an
11:56:00 6 admission, with -- do you have objection to my reading it?

11:56:03 7 MR. DEATS: You're talking about request for
11:56:05 8 admission number one, Your Honor?

11:56:07 9 THE COURT: Yes.

11:56:07 10 MR. DEATS: And request -- any other requests?

11:56:09 11 MR. COPPOLA: No.

11:56:10 12 THE COURT: Only number one Mr. Coppola has
11:56:15 13 mentioned.

11:56:15 14 MR. DEATS: Your Honor, no, I don't have any
11:56:17 15 objection.

11:56:17 16 THE COURT: All right. Then I will read the
11:56:19 17 stipulated facts and the request for admission number one and
11:56:22 18 the response.

11:56:22 19 MR. COPPOLA: And, Your Honor, the only -- the only
11:56:25 20 other thing I'd ask is that in the request itself, there is a
11:56:28 21 misstatement. I wrote "division commander" instead of
11:56:32 22 "district commander." I think the plaintiffs would agree it
11:56:35 23 should be "district commander."

11:56:36 24 THE COURT: All right. We will take that up when we
11:56:38 25 get back to including that in the charge. So call that to my

11:56:41 1 attention again.

11:56:42 2 MR. COPPOLA: Okay.

11:56:43 3 THE COURT: I am sure that the statements of your
11:56:46 4 parts of the case have now long been forgotten by the jury.
11:56:51 5 And when they come back, we're going to have to do that
11:56:53 6 anyway. So I don't think we're in any danger with that at this
11:56:56 7 point. But be sure to bring that up when we're going over the
11:56:59 8 charge.

11:56:59 9 MR. COPPOLA: Okay. Thank you, Your Honor.

11:57:01 10 THE COURT: Anything further?

11:57:02 11 MR. COPPOLA: Not at this time, Your Honor.

11:57:03 12 MR. DEATS: Your Honor, I question the need for it as
11:57:05 13 an exhibit if in fact it's going to be read in as part of the
11:57:09 14 stipulations. But ...

11:57:10 15 THE COURT: Well, I'll take that up as we -- well, if
11:57:13 16 it's -- if there's not an objection to it, the admissions can
11:57:17 17 be brought in. It's a little redundant, but it won't take
11:57:22 18 long. So I will -- if it's an exhibit, I'll take it up as I
11:57:27 19 would any exhibits. Anything further, Mr. Deats?

11:57:30 20 MR. DEATS: Nothing further at this time, Your Honor.

11:57:32 21 THE COURT: All right. Let me remind you to stay in
11:57:34 22 close contact during this trial on which witnesses are
11:57:38 23 upcoming. I reiterate I don't want to create any gaps in
11:57:43 24 testimony. I don't want anybody requesting that we recess
11:57:46 25 early. We need to get this done. If I didn't have enough

11:57:49 1 problems in November, this is the month we move to the new
11:57:52 2 courthouse. So we're going to be involved in packing stuff
11:57:56 3 up. I'm not going to have access to everything that I need.

11:57:59 4 So I need to get this case done on the calendar and
11:58:05 5 on the basis that we talked about in the final pretrial
11:58:11 6 conference. So even if that means you agreeing to taking a
11:58:15 7 witness out of order, we can do that and work with that. But
11:58:18 8 keep in touch and know who's coming and have your witnesses
11:58:22 9 lined up.

11:58:22 10 MR. DEATS: Your Honor, I'm sorry. I did have one
11:58:24 11 more matter I wanted to mention. Of course going to invoke the
11:58:28 12 Rule with regards to the witnesses. But several of my clients
11:58:33 13 are plaintiffs, so I would think they would not be under the
11:58:35 14 Rule. And I just wanted to be absolutely clear about that
11:58:39 15 before. And I assume there will be a City representative
11:58:42 16 obviously that would not be under the rule as well.

11:58:44 17 THE COURT: That's right. Y'all talk about that over
11:58:47 18 the noon recess. And before Mr. Menefee brings the jury in
11:58:52 19 when we come back at 1:30, I'll ask if you have anything else
11:58:54 20 we need to take up and you may -- we'll discuss the Rule then
11:58:57 21 and invoking the Rule then and see who is to be exempted from
11:59:00 22 the Rule and who is not to be exempted from the Rule. So
11:59:03 23 everyone will know what the situation is.

11:59:06 24 MR. DEATS: Very good, Your Honor.

11:59:07 25 MR. COPPOLA: Thank you, Your Honor.

11:59:08 1 THE COURT: All right. Well, if there is nothing
11:59:09 2 else, the Court will be in recess until 1:30.

11:59:15 3 (Recess)

11:59:15 4 (Open Court, no jury)

13:33:43 5 THE COURT: Good afternoon, the record will reflect
13:33:47 6 that the jury is out of the room. Did y'all have an
13:33:49 7 opportunity to discuss the question on invoking the Rule over
13:33:55 8 the noon hour?

13:33:56 9 MR. DEATS: Your Honor, we did not discuss that.

13:33:58 10 However, I think it would apply normally that everybody should
13:34:01 11 be excluded except the City representative and the plaintiff
13:34:06 12 employees.

13:34:06 13 THE COURT: Mr. Coppola?

13:34:07 14 MR. COPPOLA: I agree with Mr. Deats. We don't --
13:34:09 15 you know, anybody who is not a party should be excluded.

13:34:13 16 THE COURT: All right. Then the Rule has been
13:34:17 17 invoked. What that means is, if there is anyone in the
13:34:24 18 courtroom who is not a named party in the lawsuit or the
13:34:30 19 representative of the City of Austin, you will need to leave
13:34:36 20 the courtroom during the testimony of all other witnesses.

13:34:41 21 You may not discuss this case or anything about it
13:34:45 22 with anyone else other than the lawyers from this point forward
13:34:50 23 or unless excused by the Court. If there are -- are there
13:34:56 24 anyone that fall into that category? Any witnesses here that
13:34:59 25 are not parties or party representatives?

13:35:03 1 All right. Then you will need to leave the courtroom
13:35:05 2 while the other witnesses are testifying. Now, I expect the
13:35:11 3 lawyers to explain the Rule to all of their witnesses, those
13:35:15 4 who are present and who aren't present. So the Rule is
13:35:19 5 invoked.

13:35:20 6 Anything else that we need to take up before we are
13:35:26 7 ready to proceed?

13:35:28 8 MR. DEATS: I don't believe so, Your Honor.

13:35:30 9 MR. COPPOLA: No, Your Honor.

13:35:31 10 THE COURT: All right. You may bring the jury in,
13:35:51 11 Mr. Menefee.

13:35:51 12 (Open Court, jury present)

13:36:15 13 THE COURT: Mr. Deats, are you ready to present your
13:36:19 14 opening statement.

13:36:20 15 MR. DEATS: Your Honor, I am. I had understood the
13:36:22 16 Court to say it was going to read a short joint stipulation of
13:36:27 17 facts prior to my doing that.

13:36:28 18 THE COURT: Well, I thought I was going to do it
13:36:30 19 after that, when we got to the evidence phase.

13:36:32 20 MR. DEATS: Very good, Your Honor.

13:36:44 21 THE COURT: You may proceed.

13:36:45 22 **PLAINTIFFS' OPENING STATEMENT**

13:36:45 23 MR. DEATS: May it please the Court, ladies and
13:36:50 24 gentlemen of the jury:

13:36:50 25 Again, my name is Craig Deats. I represent the

13:36:53 1 plaintiffs who are some 25 present or former district
13:36:56 2 commanders employed by the Austin-Travis County Emergency
13:37:00 3 Medical Services Department. For ease of reference, I think
13:37:03 4 we're going to refer to them just as the EMS, if that's okay
13:37:08 5 with you-all.

13:37:08 6 With me and helping me, Manuel Quinto-Pozos is an
13:37:11 7 attorney in my law firm, and Alex Kaufman again is our legal
13:37:15 8 assistant.

13:37:15 9 I want to thank you for your jury service. You've
13:37:17 10 already been thanked a couple of times by the Court and has
13:37:21 11 noted the importance of jury service. I do believe that while
13:37:25 12 voting is a true hallmark of democratic government, that jury
13:37:28 13 service is equally as important. The ability to have a dispute
13:37:34 14 settled in a court of law by a jury of one's peers is a
13:37:37 15 privilege that few country enjoy like we do, a privilege that
13:37:43 16 we have fought for over the years, a privilege that was
13:37:47 17 ensconced into the Constitution of the United States by its
13:37:50 18 framers. And I thank you for serving in this important and
13:37:53 19 venerable institution.

13:37:53 20 Now, this case arises under the Fair Labor Standards
13:37:58 21 Act, a federal pay statute that generally requires overtime pay
13:38:01 22 when an employee works more 40 hours a week. Some types of
13:38:08 23 employees are exempt from the overtime requirements if the
13:38:12 24 employer can show that they fall into certain exempt
13:38:16 25 categories. The burden is on the employer to prove that the

13:38:19 1 employee falls within the exemption.

13:38:21 2 Here Austin claims that its district commanders are
13:38:25 3 exempt as so-called executive or administrative employees under
13:38:29 4 the Act's so-called white collar exemption. However, neither
13:38:33 5 of these exceptions apply to police, fire and EMS employees,
13:38:37 6 so-called first responders, regardless of the rank that they
13:38:41 7 hold if their most important duty is their first response work,
13:38:45 8 i.e., response to emergency situations.

13:38:52 9 Likewise, these exemptions do not play -- do not
13:38:56 10 apply to an employee unless the employer can establish that
13:39:00 11 they are employed on a salary basis. And it's a little
13:39:04 12 different to say that they have a salary of such and such and
13:39:07 13 to say, on the other hand, as the FLSA uses the term, that they
13:39:11 14 are paid on a salary basis. And we will get back to that. So
13:39:16 15 can the City establish that the plaintiffs are exempt
13:39:19 16 administrative or executive employees rather than first
13:39:26 17 respondents?

13:39:26 18 Now, by agreement of the parties, we're going to use
13:39:29 19 representative plaintiffs to present testimony on the nature of
13:39:32 20 their duties. I don't think you really want to hear from 25
13:39:36 21 people, all testifying about the same stuff and how they spend
13:39:39 22 their day. So to streamline it, we've agreed to use
13:39:43 23 representative plaintiffs. And I hope that you won't think bad
13:39:47 24 about if we don't put all 25 plaintiffs on. Even so, you may
13:39:51 25 even find that some of the testimony is a bit repetitive.

13:39:55 1 We do think that the facts -- that the evidence will
13:39:57 2 show the following facts: The EMS provides emergency medical
13:40:01 3 response service for Austin and all of Travis County. It's a
13:40:06 4 quasi-military organization. This is an around-the-clock
13:40:11 5 service. Twenty-four hours a day, 365 days a year, EMS like
13:40:15 6 the police and firefighters never stop responding to calls.
13:40:20 7 There's never an off day. By far the largest division within
13:40:25 8 the EMS is its Operations Division, the employees who actually
13:40:30 9 respond to medical and other emergencies.

13:40:33 10 Now, all but one of our plaintiffs are so-called
13:40:36 11 field commanders in the Operations Division. Each of them is
13:40:41 12 routinely dispatched to medical and to other emergencies.
13:40:46 13 There are other EMS divisions; for example, Training,
13:40:50 14 Communications, that supplement the work of the Operations
13:40:53 15 Division which of course is the heart of what EMS is there to
13:40:57 16 provide.

13:40:58 17 One of our plaintiffs, Scott Lindsley, is a district
13:41:01 18 commander in one of these, the Fleet and Facilities Division.
13:41:05 19 In that job he is tasked with assisting in maintenance, repair,
13:41:09 20 and acquisition of EMS vehicles and facilities. However, he
13:41:14 21 too is dispatched to emergencies when there are issues with
13:41:17 22 vehicles and sometimes is required to provide emergency patient
13:41:21 23 care. Importantly, he also works additional shifts as a field
13:41:26 24 commander in Operations.

13:41:29 25 So until this year the rank structure in Operations

13:41:33 1 had six levels. Top to bottom you start with the director of
13:41:37 2 the department. Then you have the assistant chief or the chief
13:41:40 3 of staff. That's followed -- the next rank -- excuse me -- the
13:41:45 4 next rung down is the division chiefs, followed by the district
13:41:49 5 commanders. Those are our plaintiffs. Finally, you have the
13:41:52 6 clinical specialists, sometimes referred to as captains, and
13:41:56 7 paramedics. Just this year the EMS added EMTs as a new level
13:42:02 8 below paramedics. With the exception of the director,
13:42:05 9 employees at all of these levels must be EMT certified.

13:42:09 10 The EMTs, the paramedics, the captains, they all
13:42:13 11 staff ambulances. We often refer to them as "the medics"
13:42:16 12 because they all perform essentially that same function.
13:42:21 13 Obviously, a paramedic is higher level than EMT. Captain is
13:42:25 14 higher than paramedics. But, again, they're all medics. They
13:42:30 15 all staff ambulances.

13:42:31 16 Now, looking at the schedule and how medics operate,
13:42:34 17 the Operations Division is divided into six geographic
13:42:38 18 districts. Each district has several stations within it. The
13:42:41 19 medics are assigned to ambulances and to stations. An
13:42:45 20 ambulance is staffed by two persons in one of those three
13:42:49 21 ranks. The ambulance personnel generally work a 48-hour
13:42:52 22 workweek, either in 12- or 24-hour shifts. That means that
13:42:56 23 when they work a week, they get eight hours of regularly
13:42:59 24 scheduled overtime pay. All of them are considered by the City
13:43:03 25 to be nonexempt for overtime purposes.

13:43:07 1 Their ambulances are so-called ALS-equipped
13:43:12 2 vehicles. "ALS" stands for Advanced Life Support. They
13:43:16 3 respond to medical emergencies, to accidents, to rescues, to
13:43:19 4 fire scenes, to crime scenes, wherever medical emergency care
13:43:24 5 might be needed. Calls are assigned to priority one to five,
13:43:28 6 depending on the severity of the call, one being the most
13:43:32 7 severe. Certain cases, like cardiac or shortness of breath
13:43:35 8 cases or death pronouncements are given special attention and
13:43:39 9 aren't necessarily assigned a category.

13:43:40 10 There's a computer-aided dispatch system that keeps
13:43:44 11 track of the medics, the ambulances, at all times. It knows
13:43:48 12 when they're responding to calls. It knows when they're
13:43:51 13 available for assignment. It knows who is closest to a
13:43:54 14 reported emergency.

13:43:55 15 Within Operations, there are also special operations
13:43:58 16 sections comprised of certain special teams. There's a
13:44:01 17 hazardous material team, a rescue team, even a boat team. The
13:44:06 18 people on these teams sometimes are called to respond to
13:44:09 19 specialized emergency situations.

13:44:11 20 So let's compare them to the field commanders, and we
13:44:14 21 think the facts will show these: The field commanders --
13:44:17 22 again, all of our plaintiffs but one -- also do shift work.
13:44:20 23 They work 48 hours a week in two 24-hour shifts. However, they
13:44:24 24 are not paid overtime.

13:44:27 25 Each field commander is assigned to supervise a

13:44:30 1 district during his or her shift. The commanders are also
13:44:32 2 assigned a group of subordinates for mentoring and evaluative
13:44:37 3 purposes. They're assigned to command vehicles that, like
13:44:40 4 ambulances, are fully equipped ALS vehicles. They carry
13:44:44 5 everything that an ambulance carries except a stretcher. They
13:44:48 6 even carry some things that ambulances do not; for example,
13:44:51 7 carbon monoxide monitors.

13:44:54 8 Like ambulances, the CAD system tracks command
13:44:57 9 vehicles during their shifts and knows if they are available
13:45:00 10 and closest to an emergency. CAD considers the command
13:45:04 11 vehicles available resources for response to emergency calls.
13:45:09 12 Commanders, like their subordinates, are in fact dispatched to
13:45:12 13 medical and other emergencies. They're not automatically
13:45:16 14 dispatched to all calls, but to the more serious calls; for
13:45:19 15 example cardiac, shortness of breath, priority one and two
13:45:23 16 calls.

13:45:25 17 They are dispatched to those calls if they're the
13:45:28 18 closest available unit by a certain amount of time. They are
13:45:31 19 dispatched to specialized calls -- vehicle pin-ins carbon
13:45:34 20 monoxide, wilderness rescues, et cetera. EMS even stations
13:45:40 21 commanders at locations within their districts to extend or
13:45:44 22 redistribute the coverage of available units.

13:45:45 23 Commanders can also self-assign to other calls. Now,
13:45:49 24 we believe that the EMS will tell you that's so they can
13:45:52 25 monitor and evaluate their personnel. We think the evidence

13:45:55 1 will show that they self-assign for variety of reasons -- to
13:45:58 2 observe their subordinates, sure enough, but also to help in
13:46:03 3 difficult-sounding calls or because they realize they're
13:46:07 4 closest to the call, or the system is getting slammed and a lot
13:46:09 5 of people are busy at that point.

13:46:13 6 Some self-assigned calls are recorded in the system,
13:46:14 7 and others are not. What commanders do on calls may be a
13:46:18 8 subject of debate between the parties. The commander, we
13:46:21 9 posit, are in the best position to know what they do. We'll
13:46:24 10 have a representative sampling of commanders testify that they
13:46:27 11 provide direct hands-on patient care just like that provided by
13:46:31 12 the paramedics. The commanders are, in fact, among the best
13:46:35 13 paramedics available and often called upon to perform the most
13:46:39 14 difficult procedures.

13:46:40 15 The division chiefs and above, they are assigned a
13:46:44 16 traditional Monday through Friday 40-hour workweek. Unlike the
13:46:48 17 commanders, they are not part of the CAD's dispatch matrix.
13:46:51 18 They are not dispatched routinely to medical and other
13:46:54 19 emergencies. Their vehicles are not ALS vehicles. They don't
13:46:58 20 carry all the supplies and equipment that ambulances do. They
13:47:02 21 rarely, if ever, perform actual hands-on medical care. Simply
13:47:06 22 put, they're part of the group that leads the band, but not the
13:47:10 23 part of the band that actually plays.

13:47:13 24 Now, why does Austin contend that commanders belong
13:47:17 25 in this group of people that should be exempt? If the field

13:47:21 1 commanders are a part of the band that plays, then Austin
13:47:25 2 claims, nonetheless, that the most important part of the
13:47:27 3 commander's job is their supervisory or administrative duties.
13:47:31 4 Austin contends that the commanders, even in the field, are in
13:47:34 5 a supervisory capacity and that is their most important
13:47:39 6 function.

13:47:39 7 Austin we expect will produce several witnesses,
13:47:42 8 including someone designated as an expert, to testify about the
13:47:46 9 supervisory administrative duties of commanders and their
13:47:50 10 relative importance. In response we contend that the City
13:47:54 11 simply misses the mark. We have never denied that the
13:47:57 12 commanders perform supervisory and perhaps some administrative
13:48:01 13 duties. However, the exemption is labeled the executive
13:48:04 14 exemption, not the supervisory exemption.

13:48:07 15 Of course, only the Judge can instruct you on the
13:48:09 16 law, but we believe the law makes a distinction between
13:48:12 17 supervisory work that's performed in the field while you're
13:48:16 18 working alongside the troops and that performed in an office
13:48:20 19 environment.

13:48:21 20 There will be conflicting testimony about what is the
13:48:24 21 nature of the commanders' supervisory work and how important it
13:48:27 22 is compared to the first response work. Austin will tell you
13:48:31 23 that commanders only respond to 5 percent of the total calls
13:48:34 24 and, often, in a supervisory capacity. Their expert witness
13:48:38 25 found this significant. However, our commanders only make up 6

13:48:43 1 to 7 percent of the response workforce. We'll show you
13:48:50 2 statistics that show that they respond to a third as many calls
13:48:52 3 as do their subordinates. And this is documented calls.
13:48:56 4 You'll hear that documented calls do not in fact represent all
13:48:59 5 the calls that they make.

13:49:01 6 Further, you'll hear from a representative group of
13:49:04 7 our commanders that they do the same work as paramedics when
13:49:07 8 they respond to calls. They do chest compressions, they
13:49:10 9 intubate patients, they administer medicines, they take vitals
13:49:15 10 they call the hospital to let them know what to expect, all of
13:49:18 11 these types of things.

13:49:20 12 As you hear the evidence, listen to who it is that
13:49:24 13 tells you what commanders do. What do they actually do?
13:49:27 14 You'll find that the City has changed the job description over
13:49:29 15 the years. In fact, you'll find that the job description has
13:49:32 16 been changed about four times over the last four years, but the
13:49:35 17 job of the commander has not changed. Before all those job
13:49:40 18 description changes started, they were engaging in patient
13:49:43 19 care. We think the evidence will show you that that's even
13:49:45 20 more true today than ever before.

13:49:48 21 Now, let's talk about Plaintiff Scott Lindsley. As
13:49:52 22 mentioned, he's the only plaintiff who's not a field
13:49:55 23 commander. He's in charge of fleet and facilities. However,
13:49:59 24 he is assigned an ALS-equipped vehicle, and he's dispatched to
13:50:03 25 calls involving accidents of EMS vehicles. In fact, when he's

13:50:07 1 out in the field in his vehicle, he becomes part of the
13:50:10 2 dispatch matrix and may be dispatched if he's the nearest
13:50:13 3 available vehicle.

13:50:14 4 You'll also hear him testify that medical response is
13:50:18 5 the most important part of his job. Like the field commanders,
13:50:21 6 you'll hear them all testify: Medical response, the most
13:50:26 7 important part of my job.

13:50:27 8 You'll also hear Scott Lindsley testify that he works
13:50:31 9 a lot of extra shifts as a field commander in Operations. Why,
13:50:36 10 then, would he be treated differently than others in the same
13:50:39 11 job title?

13:50:40 12 Ladies and gentlemen of the jury, in employment you
13:50:44 13 have executives, and you have employees and sometimes a job has
13:50:49 14 aspects of both types of work. There was a movie that I think
13:50:54 15 many of you probably saw. If you didn't see it at the theater,
13:50:57 16 it's been on television a million times since. It's called
13:51:00 17 "Saving Private Ryan."

13:51:03 18 In "Saving Private Ryan" you saw scenes of generals
13:51:06 19 sitting in offices, making decisions to get a soldier home to
13:51:10 20 his mother because he was the sole surviving brother of four
13:51:14 21 brothers who had served in our armed forces. To accomplish
13:51:18 22 that, to get that man back from behind enemy lines, they
13:51:22 23 assigned Captain John Miller and his company to find
13:51:27 24 Private Ryan and bring him home.

13:51:29 25 Now, there's no doubt in that movie that Captain Ryan

13:51:33 1 is a supervisor. He's a captain, but he's a company
13:51:37 2 commander. There likewise is no doubt that he's in the field
13:51:42 3 doing the same job, taking the same risks as the soldiers that
13:51:47 4 he leads. He is, in fact, both a leader and a doer. Make no
13:51:52 5 mistake about it. His leadership is important, but he goes
13:51:56 6 where his company goes. He does what they do. He takes the
13:52:00 7 risks that they take. And that is the most important thing
13:52:05 8 that he does. He is not sitting in some office simply
13:52:09 9 directing others. His leadership is in the doing, in the
13:52:14 10 example that he sets, in his willingness to share with his
13:52:18 11 troops, taking the same risks and enduring the same conditions.

13:52:21 12 In the same manner, the commanders in this case,
13:52:25 13 while admittedly leaders, while admittedly supervisors, are
13:52:30 14 also the doers. They do not sit in an office simply directing
13:52:36 15 the work of others. You're going to hear testimony that they
13:52:39 16 spend the majority of their day in the field, sometimes
13:52:45 17 directing, sometimes participating in emergency medical work.
13:52:48 18 They do what paramedics do. They're part of the response team
13:52:53 19 that the EMS relies upon to make sure that they have someone
13:52:58 20 available when that emergency call comes in. In short, they
13:53:03 21 are first responders.

13:53:05 22 We believe that the evidence will convince you the
13:53:09 23 primary duty of the commanders is their role as first
13:53:11 24 responder. And because of that, under the law, we feel,
13:53:17 25 executive and administrative exemptions simply do not apply to

13:53:21 1 them.

13:53:21 2 Thank you.

13:53:23 3 THE COURT: Thank you.

13:53:32 4 Ms. Kneeland?

13:53:33 5 MS. KNEELAND: Good afternoon. Do you mind if I turn
13:53:36 6 off the blue screen? I find it distracting.

13:53:40 7 THE COURT: No. I don't mind at all.

13:53:42 8 **DEFENDANT'S OPENING STATEMENT**

13:53:42 9 MS. KNEELAND: Thank you. A medic joins the
13:53:44 10 Austin-Travis County EMS and goes to the academy. After
13:53:48 11 training as a cadet, he becomes a paramedic, one of two people
13:53:53 12 who works on an ambulance. He works 48 hours a week, usually
13:53:57 13 in two shifts. Of the over 110,000 calls that EMS responds to
13:54:03 14 every year, an ambulance responds to almost every single one of
13:54:08 15 those calls. The medic and his partner are on the ambulance
13:54:13 16 being sent to calls where people are hurt or injured, caring
13:54:17 17 for those patients, taking them to the hospital shift after
13:54:21 18 shift after shift.

13:54:24 19 As the medic gains more experience, he adds another
13:54:28 20 job: Giving on-the-job training to cadets. He becomes what's
13:54:34 21 called a clinical training officer or a captain, and he works
13:54:38 22 side by side in the ambulance with those cadets. He teaches
13:54:42 23 them the ropes of patient care side by side. But, still, he's
13:54:47 24 on ambulance, answering calls for assistance and caring for
13:54:52 25 patients shift after shift after shift.

13:54:57 1 As he gets more experience and learns more about how
13:55:01 2 EMS runs, he sees a posting for promotion to Operations
13:55:06 3 Supervisor. It's a promotion to the rank of commander. The
13:55:12 4 job's different than what he's been doing. Commanders join
13:55:16 5 EMS's command staff and they wear gold badges, not the silver
13:55:22 6 ones that medics wear. They go to monthly meetings that are
13:55:26 7 held only for them and their superiors.

13:55:30 8 As we've heard, some commanders work in the field and
13:55:33 9 some work in the offices in headquarters. But that -- the
13:55:36 10 posting that this medic has his eye on, it's in the field.
13:55:40 11 It's what we call a field commander. As you'll hear, the job
13:55:45 12 of field commander has not changed much over the years. What
13:55:50 13 does the job description say that a field commander does, and
13:55:53 14 what does EMS rely on the field commanders to do shift after
13:55:58 15 shift after shift?

13:55:59 16 Field commanders are also scheduled to work 48 hours
13:56:03 17 a day [sic], but that's to line them up with the way the crews
13:56:07 18 work. Their salary takes those 48 hours into account. Field
13:56:14 19 commanders are the highest ranking EMS officers on their shift
13:56:17 20 in any given district during the day and, more importantly,
13:56:22 21 during the evenings.

13:56:24 22 Field commanders don't have partners anymore. They
13:56:28 23 ride alone in a command truck. Field commanders are sent to
13:56:33 24 only 2 1/2 percent of the over 110,000 calls that EMS responds
13:56:40 25 to every year. Field commanders are responsible for

13:56:46 1 supervising five to seven crews, meaning five to seven
13:56:49 2 ambulances with two to three people on them, in their district
13:56:53 3 on the ambulances in each shift they work. They make sure they
13:56:58 4 comply with EMS policies and procedures. They counsel them,
13:57:02 5 and they discipline them.

13:57:05 6 Field commanders are also mentors to approximately 12
13:57:08 7 medics, helping them with their career paths and goals and
13:57:11 8 providing them feedback on their operational tasks.

13:57:16 9 When a medic does something that seems wrong, it's
13:57:19 10 the field commander who looks into it. He does the first
13:57:22 11 investigation. If the field -- if the medic didn't do anything
13:57:27 12 wrong, the field commander doesn't have to do anything at all
13:57:31 13 or the field commander can use his experience to determine how
13:57:35 14 bad the infraction is. Maybe he -- the medic will get a little
13:57:39 15 counseling informally. Maybe he'll need to be written up. If
13:57:45 16 he needs to be written up, the field commander will take the
13:57:48 17 role in doing that. He will have to get approval from his
13:57:52 18 supervisor, which is given a lot of weight and generally
13:57:55 19 approved.

13:57:56 20 The field commander may also recommend termination,
13:57:59 21 and you'll hear that by City of Austin policy, the only person
13:58:02 22 who can terminate any employee in EMS is the director. But the
13:58:08 23 director will tell you that he gives a lot of weight to the
13:58:11 24 people who are in the field, who are the eyes and ears of
13:58:14 25 management for EMS.

13:58:17 1 Field commanders document the feedback that they give
13:58:21 2 to their medics, both the formal and the informal. Those
13:58:25 3 records are held to use -- are used to help determine if
13:58:29 4 someone will get a promotion or if they'll make it onto a
13:58:32 5 special team that they've applied to be on. In fact, when a
13:58:37 6 captain applies to be a commander, recommendations from
13:58:41 7 commanders are important in that process. Captains have to
13:58:45 8 solicit them from the commanders they've worked with so that
13:58:48 9 the promotion board or panel can decide whether or not this
13:58:51 10 person who's applying will be a good commander.

13:58:56 11 Field commanders are the only members of EMS's
13:58:59 12 command staff who see the ambulance crews on a daily basis.
13:59:03 13 They serve as EMS's eyes and ears in the field. They also
13:59:09 14 serve as first-line human resources for the captains and
13:59:13 15 paramedics. They answer questions about policies, help people
13:59:17 16 with paperwork on their benefits or their medical leave
13:59:21 17 requests, and they do intake for on-the-job injuries.

13:59:24 18 Field commanders help employees resolve any
13:59:27 19 grievances they have, whether they're with the higher-ups or
13:59:30 20 with their partner or other people in their stations.

13:59:35 21 Field commanders are responsible for enforcing the
13:59:38 22 laws and regulations, including important ones related to
13:59:41 23 narcotics that are handled on the ambulance, to ensure the
13:59:44 24 safety of crews, equipment, facilities, and the public they
13:59:49 25 serve.

13:59:53 1 Field commanders interface with police and fire on
13:59:56 2 larger scenes. They coordinate EMS's resources. Field
14:00:00 3 commanders also investigate and resolve customer service
14:00:04 4 issues. It's very important that the public trust EMS so that
14:00:09 5 it will call EMS, for example, if they feel they're having a
14:00:13 6 heart attack. Field commanders make key decisions about their
14:00:18 7 districts, including when to send an employee home or whether
14:00:20 8 to take an ambulance out of service on a day-to-day basis.

14:00:25 9 In short, field commanders draw on their experience
14:00:30 10 and the available information on what's going on in the entire
14:00:33 11 EMS system to exercise their independent judgment and have wide
14:00:38 12 discretion to make sure that their district runs smoothly,
14:00:42 13 safely, and provides the best possible service to its
14:00:45 14 customers.

14:00:47 15 The medic sees the posting, thinks about it, knows
14:00:51 16 that she -- he meets the qualifications, thinks he can do the
14:00:55 17 job, and so he applies. He puts in a letter of intent. In
14:01:00 18 that letter he highlights the supervisory experience he's had
14:01:04 19 as a captain. He gets the recommendations from the commanders
14:01:08 20 he's worked with. He goes through interviews. One day he
14:01:16 21 finds out he's going to get promoted.

14:01:18 22 But before he does that, he has to go through special
14:01:22 23 training -- training on management and leadership, on the
14:01:25 24 City's personnel and Human Resources policies, on problem
14:01:27 25 solving and on advanced incident management that we require of

14:01:30 1 everyone who works at a certain level in public safety. Then
14:01:34 2 he's ready.

14:01:35 3 As he gets dressed to report for his first day as a
14:01:39 4 commander, he leaves behind the white shirt and silver badge
14:01:42 5 and he buttons up his dark blue commander uniform and puts on
14:01:47 6 his gold badge. He assumes his command role. He gives up
14:01:52 7 overtime pay, but he gets the stability of salary in exchange,
14:01:56 8 a salary higher than the medics and the captains make. He has
14:02:00 9 joined EMS's management and taken on the responsibilities that
14:02:06 10 go with the promotion that he competed for.

14:02:09 11 He still sometimes provides patient care, just like a
14:02:16 12 store manager might still man the register when the store is
14:02:20 13 busy. But he's no longer on an ambulance that is dispatched to
14:02:24 14 call after call after call. For the most part he gets to
14:02:28 15 organize his day the way he wants to, determining whether it's
14:02:31 16 time to do paperwork, look on reports, visit with crews,
14:02:36 17 counsel them. That's entirely within his discretion as he
14:02:40 18 figures out his day. He is on call, and he does get
14:02:44 19 dispatched, but not with the frequency that an ambulance does.

14:02:47 20 He isn't woken up as frequently as when he was a
14:02:50 21 medic when he gets the chance to sleep. He gets the
14:02:53 22 opportunity to sit on policy committees that help form what EMS
14:02:59 23 is going to do, and that is a chance that medics don't get.

14:03:02 24 He spends more than half his time managing and
14:03:06 25 monitoring both the employees on his shift and the employees

14:03:10 1 who he's assigned to mentor. He's doing work that's important
14:03:18 2 to the patient care of EMS. Nobody denies that. But the most
14:03:23 3 important thing he does for EMS is not patient care.

14:03:26 4 The field commanders that you'll hear from took the
14:03:29 5 opportunity to compete for that promotion. They knew the
14:03:36 6 consequences and made a deal. They traded care of patients for
14:03:39 7 care of paramedics. They took on the benefits and the
14:03:44 8 responsibilities.

14:03:45 9 But now they ask you to find that their promotion
14:03:47 10 didn't really change their jobs. Their primary duty is giving
14:03:51 11 patient care. In a way, they're asking to have their cake and
14:04:00 12 eat it, too -- to be free from the day-in-and-day-out job of an
14:04:03 13 ambulance crew but be paid on an hourly basis like an ambulance
14:04:06 14 crew. This isn't fair to EMS, which specifically promoted the
14:04:09 15 field commanders so that they could apply their Operations
14:04:13 16 experience and skills to managing the medics and system.

14:04:16 17 There's one other plaintiff, plaintiff Eric Scott
14:04:21 18 Lindsley. He doesn't work in the field, but at headquarters.
14:04:25 19 Commander Lindsley is responsible for an important part of
14:04:29 20 EMS's resources. It's over 100 vehicles, and it's more than
14:04:32 21 40 stations. He does the budget estimates, interacts with
14:04:37 22 contractors, prioritizes repairs and upgrades, designs
14:04:41 23 specifications for both buildings and ambulances, decides
14:04:46 24 whether a contractor or vendor should be paid for the work
14:04:50 25 they've done.

14:04:50 1 On a day-to-day basis, Commander Lindsley does all of
14:04:55 2 this with little or no input from his superiors. In many
14:04:58 3 cases, he's the one person from EMS who's authorized to change
14:05:01 4 specifications or change what contracts -- excuse me -- change
14:05:08 5 specifications to contracts or to the specific ambulances or
14:05:11 6 buildings.

14:05:12 7 His specialized knowledge of this part of EMS is
14:05:16 8 crucial to EMS's Operations. Even though he has these very
14:05:20 9 significant and substantial responsibilities, Commander
14:05:24 10 Lindsley, like the field commanders, also asks that you find
14:05:27 11 that he doesn't have the impact that he has on fleet and
14:05:30 12 facilities. He wants you to find that his job is routine. He
14:05:37 13 also wants you to find that the shifts he voluntarily accepts
14:05:40 14 as a field commander should be paid overtime.

14:05:42 15 What responsibilities do the commanders have that
14:05:51 16 have the greatest impact on EMS? Are they primarily a
14:05:55 17 front-line patient care resource or is their primary value to
14:05:59 18 EMS and patients different? That is what this case is about,
14:06:02 19 the responsibilities of the field commanders and Commander
14:06:06 20 Lindsley assumed when they got promoted.

14:06:08 21 After you've heard the evidence, you'll see that the
14:06:12 22 commanders are trying to back out of the deal they made when
14:06:14 23 they put on their dark blue uniforms and their gold badges and
14:06:19 24 we will ask you to find that EMS has proven that the commanders
14:06:22 25 are not entitled to overtime pay and to return a verdict in

14:06:25 1 EMS's favor.

14:06:26 2 Thank you.

14:06:28 3 THE COURT: Thank you.

14:06:29 4 Ladies and gentlemen, in just a moment the plaintiff
14:06:37 5 will call the plaintiffs' first witness and the testimony in
14:06:39 6 this case will start.

14:06:41 7 But as you'll recall when I gave you earlier
14:06:44 8 instructions, I told you part of the evidence that you will
14:06:48 9 consider are stipulations of the parties and exhibits that are
14:06:54 10 introduced. The parties have entered into certain stipulations
14:06:57 11 of fact which I will read to you now. You are to accept what I
14:07:02 12 read to you as if it were proved by a witness or presented by
14:07:10 13 the witness or presented by an exhibit and consider it in the
14:07:15 14 same light and give it the same weight as you would any other
14:07:19 15 evidence.

14:07:19 16 The stipulations of the parties are:

14:07:21 17 One, the relevant period as used for purposes of this
14:07:24 18 lawsuit is April the 26th, 2009 and continuing thereafter;
14:07:30 19 Two, all of the plaintiffs are current or former
14:07:34 20 employees of the City of Austin;

14:07:36 21 Three, the City of Austin has been governed during
14:07:40 22 the relevant time period by the Fair Labor Standards Act, Title
14:07:44 23 29 of the United States Code, Section 201 and the sections
14:07:48 24 following;

14:07:50 25 Four, except for Peter DiDonato, Gary Wadham, and

14:07:55 1 Glenn Anderson, each of the plaintiffs is or was for some part
14:07:59 2 of the relevant period employed by the City as a district
14:08:02 3 commander or operations supervisor in the Austin-Travis County
14:08:08 4 emergency medical services department;

14:08:12 5 Five, the workweek for plaintiffs during the relevant
14:08:15 6 period is a seven-day workweek, commencing on Sunday at 7 a.m.
14:08:20 7 and concluding the following Sunday at 6:59 a.m.;

14:08:25 8 Six, each of the plaintiffs who served as a field
14:08:30 9 district commander during the relative period was scheduled to
14:08:33 10 work and did work more than 40 hours per week during some or
14:08:37 11 all weeks during that time;

14:08:41 12 Seven, the City does not pay plaintiffs one and
14:08:44 13 one-half times their regular rate of pay for hours in excess of
14:08:49 14 40 worked each week during the relevant period;

14:08:52 15 Eight, each of the plaintiffs earned more than
14:08:55 16 \$455 per week during the relevant period;

14:08:59 17 Nine, each of the plaintiffs during the time that
14:09:02 18 plaintiff served as a field commander customarily and regularly
14:09:07 19 directed the work of two or more employees;

14:09:10 20 Ten, all uniformed employees of the Austin-Travis
14:09:15 21 County EMS Department, except the director, are required to
14:09:19 22 maintain state EMT paramedic certification.

14:09:24 23 In addition, the following request for admission was
14:09:29 24 submitted by the plaintiff -- by the defendant to the
14:09:34 25 plaintiff:

14:09:35 1 Plaintiff was asked: Admit that you earn or earned
14:09:40 2 at least \$455 per week in salary from your employment as an
14:09:45 3 operations supervisor or division commander with the City of
14:09:49 4 Austin between April 27th, 2008 and the present.

14:09:54 5 And the response was: Plaintiffs deny that their
14:09:58 6 jobs carried the title of division commander. Their jobs
14:10:02 7 during the relevant period were referred to as operations
14:10:06 8 supervisor or district commander. Plaintiff Victoria Branning
14:10:11 9 denies this request as to a leave period during the three or
14:10:15 10 four months in the summer of 2008. Plaintiff Landon Willhoite
14:10:21 11 denies this request as to a period covered by military
14:10:25 12 deployment orders. Otherwise, Plaintiffs admit this request.

14:10:29 13 You are to take those admissions with their
14:10:32 14 stipulations as proved.

14:10:35 15 Additionally, the parties have agreed that certain
14:10:40 16 exhibits are admissible into evidence. So at this time the
14:10:45 17 Court admits for all purposes Plaintiffs' Exhibits 4 through
14:10:51 18 10, inclusive; 12 through 23, inclusive, 26 through 29;
14:10:57 19 inclusive; 31; and 38 through 46, inclusive.

14:11:05 20 The plaintiffs do not object to the admissibility of
14:11:09 21 the following defendant's exhibits, so at this time the Court
14:11:12 22 admits into evidence the following Defendant's Exhibits:
14:11:17 23 Defendant's Exhibits 1 through 8, inclusive; Defendant's
14:11:20 24 Exhibits 12 through 39, inclusive; Defendant's Exhibits 41
14:11:26 25 through 49; inclusive, and Defendant's Exhibit 53 through 57,

14:11:39 1 inclusive.

14:11:40 2 I noticed an anomaly in what your agreement was, and
14:11:44 3 I am uncertain whether Plaintiffs' Exhibit 33 was meant to be
14:11:47 4 admitted or not. It is referred to once as admissible and once
14:11:55 5 as admissible only with regard to the issue of good faith
14:11:59 6 later. So do you desire -- is your agreement to admit
14:12:03 7 Plaintiffs' Number 33 now or not now?

14:12:07 8 MR. COPPOLA: Your Honor, I think it's to be admitted
14:12:09 9 only for the issue of good faith.

14:12:13 10 THE COURT: All right. So the ones I have admitted
14:12:20 11 are admitted. At this time the plaintiff may call its first
14:12:23 12 witness. Any person who I have previously placed under the
14:12:26 13 Rule must leave the courtroom at this time.

14:12:31 14 MR. DEATS: Your Honor, at this time the plaintiffs
14:12:33 15 would call Plaintiff Bryan Fitzpatrick to the stand.

14:13:21 16 (Witness sworn)

14:13:21 17 **BRYAN FITZPATRICK,**

14:13:21 18 having been first duly sworn, testified as follows:

14:13:21 19 **DIRECT EXAMINATION**

14:13:21 20 **BY MR. DEATS:**

14:13:21 21 Q. Would you please state your name.

14:13:22 22 A. Bryan Fitzpatrick.

14:13:24 23 Q. Mr. Fitzpatrick, are you currently employed?

14:13:26 24 A. Yes, I am.

14:13:27 25 Q. Who is your employer?

14:13:28 1 A. Employed by the City of Austin.

14:13:30 2 Q. And what position do you hold with the City of Austin?

14:13:32 3 A. I'm an operations supervisor, which is also the rank of

14:13:36 4 district commander.

14:13:37 5 Q. So the official title is operations supervisor, but you're

14:13:40 6 generally referred to as district commanders?

14:13:42 7 A. Yes.

14:13:42 8 Q. And we'll refer to you as district commander today. Okay?

14:13:46 9 A. Yes.

14:13:46 10 Q. Let's talk about your employment history with EMS. When

14:13:50 11 did you first join the EMS?

14:13:52 12 A. I was hired to work for EMS as an EMT in 1993 -- November

14:13:58 13 of '93.

14:14:00 14 Q. And how long did you remain as an EMT?

14:14:02 15 A. I was EMT through 1997.

14:14:05 16 Q. And what happened in '97?

14:14:07 17 A. I was promoted to intermediate.

14:14:10 18 Q. Intermediate EMT?

14:14:12 19 A. Intermediate EMT, yes. It's the next rank above EMT.

14:14:16 20 Q. Okay. And did something else happen in 1997?

14:14:18 21 A. Yes. I was also promoted later in 1997 to paramedic.

14:14:22 22 Q. Okay. And how long did you remain as a paramedic

14:14:25 23 thereafter?

14:14:26 24 A. I was a paramedic in the Operations Section from 1997

14:14:30 25 until approximately middle of 2000, where I received promotion

14:14:34 1 to training captain.

14:14:35 2 Q. And what exactly did a training captain do at that time?

14:14:39 3 A. As training captain I was removed from my field duties in
14:14:43 4 the street, and I actually went to our headquarters where I
14:14:47 5 coordinated training plans and did evaluations on employees
14:14:50 6 specifically in our rescue section.

14:14:51 7 Q. And how long did you remain in that position?

14:14:54 8 A. I was a training captain from 2000 until late 2001.

14:15:01 9 Q. And what happened at that point?

14:15:03 10 A. In 2001 I had gone through a training academy to become a
14:15:08 11 commander, and I was made an acting district commander in
14:15:10 12 December of 2001.

14:15:11 13 Q. And how long did you remain as an acting district
14:15:14 14 commander?

14:15:14 15 A. Until October of 2002.

14:15:17 16 Q. And have you remained a district commander at all times
14:15:21 17 since that point?

14:15:21 18 A. Yes. I received promotion in 2002 to district commander,
14:15:25 19 no longer acting, and I've been a commander since then.

14:15:29 20 Q. Okay. And as commander, do you hold any other titles
14:15:32 21 besides district commander?

14:15:33 22 A. Yes. I'm the Special Operations Section of our
14:15:36 23 department.

14:15:36 24 Q. Okay. And so what sort of special operations are you
14:15:39 25 involved in? What does that entail?

14:15:41 1 A. The Special Operations Section of EMS is charged with
14:15:45 2 responding to calls over and above the traditional and medical
14:15:49 3 and traumatic calls. Things along the nature of wilderness
14:15:53 4 rescues, water rescues, hazardous materials responses, tactical
14:15:58 5 missions with SWAT team. Things of that nature.

14:16:00 6 Q. And when you formed special teams for that purpose, how do
14:16:04 7 the teams work? If there's, say, a swift water rescue, what
14:16:06 8 would happen?

14:16:07 9 A. For the swift water rescue, specific ambulances and
14:16:10 10 command vehicles are designated with Special Operations
14:16:12 11 personnel on them. Through or CAD system, it recognizes these
14:16:16 12 specific units and sends them to these calls.

14:16:19 13 Q. Okay. Now within the EMS, are you assigned to any
14:16:22 14 specific division?

14:16:23 15 A. Yes. I'm in the Operations Division.

14:16:27 16 Q. And what is the Operations Division?

14:16:31 17 A. It's the largest portion of our EMS organization. It's
14:16:35 18 what we traditionally think of as EMS. It's the ambulances and
14:16:39 19 response vehicles which are out in the street.

14:16:41 20 Q. Okay. And what portion of the day does the Operations
14:16:43 21 Division provide service?

14:16:45 22 A. It's a 24-hour-a-day operation.

14:16:47 23 Q. 24 hours a day, how many days a year?

14:16:50 24 A. Seven days a week, 365 days a year.

14:16:54 25 Q. So you're essentially always in operation, correct?

14:16:57 1 A. Yes.

14:16:57 2 Q. And to handle that continuous, around-the-clock operation,

14:17:01 3 do you operate in shifts?

14:17:03 4 A. Yes, we do.

14:17:03 5 Q. Now, what sort of emergency medical services do you

14:17:06 6 provide, and what sort of situations will the Operations

14:17:09 7 Division be sent out?

14:17:11 8 A. The Operations Division responds to any and all medical

14:17:15 9 calls and requests through 9-1-1, any medical or traumatic

14:17:20 10 event that is designated having potential patients involved.

14:17:24 11 Someone requiring care or transport to the hospital, we're

14:17:27 12 dispatched to that.

14:17:27 13 Q. Do you recall whether or not that would involve situations

14:17:30 14 that involve fire scenes, for example?

14:17:32 15 A. Yes.

14:17:32 16 Q. Do you respond to situations that involve crime scenes or

14:17:36 17 crime victims?

14:17:37 18 A. Yes.

14:17:37 19 Q. What about rescues? You mentioned that a couple of

14:17:40 20 times. Would that be a type of situation in which EMS might be

14:17:44 21 called?

14:17:45 22 A. Yes.

14:17:45 23 Q. What about car accidents? Any involvement there?

14:17:47 24 A. Yes.

14:17:48 25 Q. What type of involvement in the car accident situation?

14:17:52 1 A. Again, it depends on the situation and the specifics of
14:17:55 2 the accident. Minor accidents maybe get an ambulance and
14:17:58 3 response to -- a single ambulance response. Or if it was
14:18:01 4 something as complicated as multiple ambulances and commanders
14:18:05 5 responding to something like a pin-in collision, where a victim
14:18:09 6 is trapped in a vehicle and unable to get out on their own
14:18:13 7 power.

14:18:13 8 Q. All right. Let's talk about the hierarchy within the
14:18:16 9 Operations Division. Who is at the top of the pyramid in terms
14:18:20 10 of the Operations Group?

14:18:21 11 A. The top of the Operations Group would be my operation
14:18:25 12 chief or division chief.

14:18:26 13 Q. Okay. But, of course, you have a department director, do
14:18:30 14 you not?

14:18:30 15 A. He's at the top of all EMS, yes. The department director.

14:18:34 16 Q. And so going down from the department director, in chain
14:18:37 17 of command for Operations, who's next?

14:18:39 18 A. It would be the assistant chief or chief of staff.

14:18:41 19 Q. Okay. And I believe that that is who at present?

14:18:44 20 A. It's Chief James Shamard.

14:18:46 21 Q. And he is the City representative here today?

14:18:48 22 A. Yes, he is.

14:18:49 23 Q. Okay. And beneath the chief of staff or the assistant
14:18:53 24 chief, Mr. Shamard, who is next in the chain of command?

14:18:57 25 A. There are six division chiefs.

14:18:59 1 Q. Are they sometimes referred to as operations managers?

14:19:02 2 A. Yes, they are.

14:19:03 3 Q. But more commonly you call them division chiefs?

14:19:06 4 A. Yes.

14:19:06 5 Q. And beneath the division chiefs, who is next in the chain

14:19:10 6 of command?

14:19:11 7 A. Below the division chiefs come the operations supervisor

14:19:15 8 or district commanders.

14:19:16 9 Q. And that's the rank that you hold?

14:19:18 10 A. Yes, it is.

14:19:19 11 Q. And that's the rank that we are talking about here today

14:19:21 12 in this lawsuit?

14:19:22 13 A. Yes.

14:19:22 14 Q. And then beneath the district commanders you have the

14:19:25 15 medics, and they're actually in three separate categories,

14:19:29 16 aren't they?

14:19:29 17 A. Yes, they are.

14:19:30 18 Q. And what are those categories?

14:19:32 19 A. The rank immediately below district commander is captain,

14:19:35 20 which is also referred to as clinical specialist. Below that

14:19:40 21 is the paramedic, which is also referred to as the Medic II.

14:19:42 22 And then below that is the EMT, which is also referred to as

14:19:47 23 the Medic I.

14:19:48 24 Q. Okay. Now, of course, you've been with EMS since 1993. A

14:19:52 25 couple of those positions, the captains, the EMTs, they're

14:19:56 1 relatively new, aren't they?

14:19:58 2 A. Yes, they are.

14:19:59 3 Q. Now, I know that you said -- testified earlier you came on
14:20:02 4 as an EMT. Has the EMT rank been a part of EMS throughout the
14:20:08 5 entirety of your career?

14:20:08 6 A. It's transitioned. When I first started here in 1993, our
14:20:12 7 organization was tiered. It had an ALS level and a BLS level.
14:20:16 8 The ALS was the advanced life support ambulances, and BLS was
14:20:21 9 the basic life support ambulances. They were divided up based
14:20:25 10 on the severity of the call.

14:20:26 11 Q. Okay.

14:20:27 12 A. That transitioned in the late 1990s, early 2000s, to an
14:20:31 13 all-advanced life support system, where everyone was a
14:20:35 14 paramedic and all the ambulances were equal.

14:20:38 15 Q. So did they abandon the EMT ranking at that time?

14:20:41 16 A. It was no longer applicable. You had to be a paramedic to
14:20:43 17 work here.

14:20:43 18 Q. And when did they bring back the EMT rank that you just
14:20:46 19 talked about a minute ago?

14:20:48 20 A. Within the last year.

14:20:49 21 Q. So there was a period, I guess, then, of ten, eleven years
14:20:52 22 where you didn't even have EMTs. It was just paramedics?

14:20:55 23 A. Correct.

14:20:55 24 Q. Let's talk about the captains or clinical -- excuse me --
14:20:58 25 the clinical specialists. Did you have clinical specialists

14:21:03 1 throughout your career?

14:21:04 2 A. No, we did not.

14:21:05 3 Q. When did you start having clinical specialists?

14:21:07 4 A. The rank of clinical specialist came out as a side product
14:21:12 5 of our bargaining -- contract bargaining in 2008.

14:21:15 6 Q. Okay. And so now you have the three tiers, but at times
14:21:19 7 you only had the one tier of paramedic, right?

14:21:21 8 A. Yes.

14:21:22 9 Q. Okay. Now, let's talk about the districts of the EMS
14:21:26 10 Operations Group. Is -- how do you handle servicing all of
14:21:31 11 Travis County with the Operations Division?

14:21:34 12 A. The Operations Division is divided into six geographic
14:21:39 13 districts. Each of those districts has a number of ambulances
14:21:42 14 and one district commander who is responsible for each one of
14:21:45 15 the geographic areas.

14:21:46 16 Q. So we have one station? two stations? several stations?
14:21:52 17 How many in a district?

14:21:53 18 A. It varies from district to district. You could have
14:21:57 19 anywhere from four or five, up to six, seven, or eight.

14:21:59 20 Q. And Operations employees, how are they assigned to spots
14:22:03 21 within the district?

14:22:04 22 A. They -- the paramedics and clinical specialists are
14:22:07 23 assigned via a shift bid based on seniority. Every six months
14:22:13 24 they're allowed the opportunity, based on their seniority, pick
14:22:16 25 a station or assignment, days of the week, and location that

14:22:19 1 they choose.

14:22:20 2 Q. And what about the district commanders? How are they
14:22:24 3 assigned?

14:22:24 4 A. We do the same thing. We're allowed to pick every six
14:22:27 5 months the location of our assignment based on our availability
14:22:31 6 and our qualifications to be in that area.

14:22:34 7 Q. Now, you mentioned Special Operations personnel. Are they
14:22:37 8 housed within the same district, or how are they handled?

14:22:40 9 A. Yes, they are. They are specifically under the two
14:22:42 10 district commanders, the Special Operations District 4 and
14:22:46 11 District 6. There are two Special Operations commanders that
14:22:50 12 are two of the six on duty at all times.

14:22:52 13 Q. Okay. So each -- how many commanders will be on duty at
14:22:56 14 any one time, given the six districts?

14:22:58 15 A. There's usually six of us on duty any given day.

14:23:02 16 Q. And then, of course, I guess there will be personnel
14:23:05 17 assigned to all of the ambulances in all of the districts as
14:23:08 18 well?

14:23:08 19 A. Yes.

14:23:09 20 Q. So numbers-wise, I guess there are quite a few more
14:23:12 21 paramedics, medics, et cetera, than there are commanders?

14:23:16 22 A. Yes, there are.

14:23:17 23 Q. Now, if you know, are EMS employees -- you mentioned it
14:23:20 24 earlier -- are they represented by a union?

14:23:22 25 A. Yes we are.

14:23:23 1 MR. COPPOLA: Objection, Your Honor. Relevance.

14:23:25 2 THE COURT: What's the relevance, Mr. Deats?

14:23:27 3 MR. DEATS: Your Honor, we're going to show that the

14:23:29 4 union bargains for the wages and benefit of district commanders

14:23:33 5 and below, but not for the division chiefs and above. We think

14:23:36 6 it's another factor that shows the nature of their work.

14:23:45 7 THE COURT: Mr. Coppola?

14:23:46 8 MR. COPPOLA: Your Honor, the fact that district

14:23:48 9 commanders are part of the union or not part of the union has

14:23:53 10 absolutely no bearing on whether or not they're exempt

14:23:56 11 employees. It's simply not a consideration.

14:23:58 12 THE COURT: I'm going to sustain the objection to

14:24:00 13 relevance at this time, although, Mr. Deats, you may come back

14:24:03 14 to it at a later time if it becomes more relevant. I think

14:24:06 15 that is not relevant at this time to what the commanders do,

14:24:11 16 but you're welcome to try to convince me later.

14:24:16 17 MR. DEATS: Okay. Your Honor. I would also add that

14:24:18 18 to regard with salary and how their salaries are determined,

14:24:21 19 bargaining has something to do with that as well.

14:24:24 20 MR. COPPOLA: Your Honor, I believe there's an

14:24:27 21 admission on this point, and I don't believe that the

14:24:30 22 plaintiffs are entitled to introduce any evidence to contradict

14:24:33 23 their admission. And with respect to how they bargained for

14:24:37 24 their salary, again, I think is irrelevant to the issue of

14:24:42 25 whether they're exempt or not.

14:24:43 1 THE COURT: I don't think the Fair Labor Standards
14:24:44 2 Act directs in itself to whether a salary is derived through a
14:24:54 3 bargaining arrangement or otherwise. So I want you to restrict
14:24:59 4 yourself to the elements of the Fair Labor Standards Act.

14:25:02 5 MR. DEATS: Very good, Your Honor.

14:25:03 6 THE COURT: All right.

14:25:04 7 Q. (BY MR. DEATS) Now, if I could, I'd like to turn to --
14:25:16 8 start with Defendant's Exhibit 36.

14:25:28 9 MR. DEATS: And, Your Honor, I believe this is among
14:25:30 10 the admitted ones, so I ask that we have permission to go ahead
14:25:34 11 and publish it to the jury.

14:25:44 12 THE COURT: Defendant's Exhibit No. 36 is in
14:25:49 13 evidence.

14:25:49 14 Q. (BY MR. DEATS) And I want to direct your attention to the
14:26:00 15 fourth page of the exhibit. Do you see a pay table there?

14:26:08 16 A. Yes, I do.

14:26:09 17 Q. Okay. And at the top, what is the heading --

14:26:12 18 THE COURT: Just a moment. I want to make sure that
14:26:14 19 this record is clear. Anyone who looks at it later, all of the
14:26:20 20 pages are numbered one of one. So when you say "fourth page,"
14:26:25 21 it's not immediately apparent what we're talking about. Why
14:26:28 22 don't you further identify it by the Bates stamp in the lower
14:26:32 23 right-hand corner so the record will be clear.

14:26:35 24 MR. DEATS: The Bates stamp, Your Honor, would be
14:26:37 25 COA-35403.

14:26:40 1 THE COURT: All right. You may proceed.

14:26:43 2 Q. (BY MR. DEATS) Do you recognize this as the City of Austin

14:26:46 3 EMS pay schedule for meet and confer FY 2011-2012?

14:26:51 4 A. Yes, I do.

14:26:53 5 Q. And this does list the wages of the various ranks listed

14:27:00 6 on an hourly basis, does it not?

14:27:03 7 A. Yes, it does.

14:27:04 8 Q. And it does include the wages for the EMS operations

14:27:13 9 supervisor, correct?

14:27:15 10 A. Yes.

14:27:15 11 Q. And again, operations supervisor is another name that we

14:27:19 12 use for the district commander position?

14:27:21 13 A. Yes.

14:27:21 14 Q. Can you explain to me why there seems to be different

14:27:24 15 operations supervisors listing? I see an operations

14:27:29 16 supervisor, operations supervisor 42, and operations supervisor

14:27:35 17 48?

14:27:35 18 A. The differences are based on the workweek. Under the

14:27:38 19 column WW, it's either 40, 42, or 48 based on that assignment.

14:27:43 20 Some people that hold the rank of district commander are on

14:27:46 21 40-hour workweeks, some are on 42, and some like myself are on

14:27:51 22 48s.

14:27:51 23 Q. And it does list the wages on an hourly basis, does it

14:27:55 24 not?

14:27:55 25 A. Yes, it does.

14:27:56 1 Q. And I see that wage increases as you gain experience with
14:27:59 2 the department?

14:28:01 3 A. Yes.

14:28:01 4 Q. Some sort of form of seniority pay or something like that?

14:28:05 5 A. Yes.

14:28:05 6 Q. Okay. Now, you -- have you been told in the past that
14:28:09 7 you're paid a yearly salary?

14:28:11 8 A. Yes, I have.

14:28:12 9 Q. And do you know how that -- has that been explained to you
14:28:15 10 how that salary is broken down to produce this hourly rate?

14:28:19 11 A. Yes.

14:28:19 12 Q. And what's your understanding of that?

14:28:21 13 A. My understanding is I receive a certain -- what's called a
14:28:26 14 salary, and it is broken down based on the number of hours I'm
14:28:30 15 assigned per year. So I get an hourly -- a total compensation
14:28:35 16 for the year, and it's broken down to an hourly rate based on
14:28:40 17 my 48-hour workweek and 52 weeks a year.

14:28:44 18 Q. And once it's broken down into a 48-hour workweek, is that
14:28:48 19 then the salary you receive for the hours that you work?

14:28:51 20 A. For the hours that I work, yes.

14:28:52 21 Q. And if you're asked to work an extra 24-hour shift in a
14:28:56 22 given week, do you receive an extra 24 hours pay?

14:28:59 23 A. Yes, I do.

14:28:59 24 Q. Now, of course, you understand that the medics -- the
14:29:02 25 clinical specialists, the paramedics, the EMTs -- they're paid

14:29:07 1 on an hourly basis under this same pay scale, aren't they?

14:29:11 2 A. Yes, they are.

14:29:12 3 Q. Now -- but they're not considered exempt from overtime

14:29:15 4 under the FLSA by the City are they?

14:29:17 5 A. No, they're not.

14:29:18 6 Q. So when they work a 48-hour schedule, let's say, do you

14:29:22 7 know whether or not they get paid overtime for hours over 40?

14:29:25 8 A. They do.

14:29:26 9 Q. And so in a week in which they work their entire 48-hour

14:29:30 10 shift, would they get paid time and a half for the last eight

14:29:33 11 hours of work?

14:29:34 12 A. Yes, they do.

14:29:35 13 Q. Now, just looking at this same page, COA-35403, I see

14:29:42 14 that -- do you see that the 48-hour clinical specialists -- and

14:29:47 15 that's the captain, right?

14:29:49 16 A. Yes.

14:29:49 17 Q. They are on an hourly rate of \$26.13, correct?

14:29:56 18 A. Yes.

14:29:56 19 Q. So -- and then if we look down, we see the EMS operations

14:29:59 20 supervisor, 48. That would be you, right?

14:30:02 21 A. Yes.

14:30:02 22 Q. And then we see that you earn an hourly rate, if you're in

14:30:06 23 the same experience zone, of \$30.70, correct?

14:30:09 24 A. Correct.

14:30:10 25 Q. Okay. So that last eight hours of the week in which the

14:30:16 1 clinical specialist works, they get time and a half, \$26, that
14:30:19 2 would be in the \$39 range, right?
14:30:23 3 A. Correct.
14:30:23 4 Q. So they actually get paid more than you for the last eight
14:30:26 5 hours of work each week, don't they?
14:30:28 6 A. Yes.
14:30:29 7 Q. Now, let's do the same thing with the EMS paramedic 48.
14:30:32 8 They show a salary -- and I'm looking at zone four -- or
14:30:36 9 \$21.77, correct?
14:30:39 10 A. Yes.
14:30:39 11 Q. Now, again, if they got time and a half pay, do they get
14:30:43 12 paid more than you do for the last eight hours that you work?
14:30:46 13 A. Yes, they do.
14:30:47 14 Q. And if they work a shift on overtime, do they get paid
14:30:53 15 more for working a shift as a paramedic than you get paid
14:30:57 16 working a shift of overtime at straight time for the operations
14:30:59 17 supervisor position?
14:31:01 18 A. Yes, they would.
14:31:02 19 Q. And is that also true of the clinical specialist?
14:31:05 20 A. Yes.
14:31:06 21 Q. By the way, division chiefs, the next rank above you, are
14:31:10 22 they reflected on this chart?
14:31:11 23 A. I don't see them. They would be listed as EMS Operations
14:31:16 24 Manager. It's not listed on this chart.
14:31:18 25 Q. Okay. Let's talk about the medics -- the EMTs, the

14:31:25 1 paramedics, and the captains -- a little bit and how their
14:31:29 2 schedule plays out. You supervise crews of paramedics, don't
14:31:33 3 you?

14:31:33 4 A. Yes, I do.

14:31:34 5 Q. And if I use the terms "medics," you'll understand I'm
14:31:37 6 talking about all three of those ranks. Okay?

14:31:40 7 A. Okay.

14:31:40 8 Q. Now, we've already talked about that they're nonexempt.
14:31:44 9 What sorts of shifts do they work?

14:31:46 10 A. The clinical specialists, paramedics, and medics work a
14:31:51 11 variety of shifts. They all work 48-hour shifts in the field.
14:31:54 12 They'll work a variety of 12-hour shifts and 24-hour shifts,
14:31:59 13 something that will make up 48 hours in an entire week.

14:32:03 14 Q. So a medic may work two 24-hour shifts, a 24 and two 12s,
14:32:08 15 but it always adds up to 48, correct?

14:32:10 16 A. Yes.

14:32:11 17 Q. And as we talked about, they get paid overtime for their
14:32:14 18 hours in excess of 40?

14:32:16 19 A. Yes.

14:32:16 20 Q. There's a lot of overtime in EMS, isn't there?

14:32:19 21 A. Yes, there is.

14:32:20 22 Q. And when they work an extra shift --
14:32:22 23 And that happens pretty regularly, doesn't it?

14:32:26 24 A. Yes.

14:32:26 25 Q. -- they get paid overtime for that?

14:32:29 1 A. Yes.

14:32:29 2 Q. Now, we've talked about the fact that they're assigned to

14:32:32 3 district stations and ambulances, right?

14:32:34 4 A. Yes.

14:32:35 5 Q. And those assignments are awarded through a bidding

14:32:37 6 process, are they not?

14:32:38 7 A. Correct.

14:32:39 8 Q. And if I could direct your attention to Plaintiffs'

14:32:41 9 Exhibit 15, you'll see that book ahead of you. Excuse me one

14:32:47 10 second. And I believe we can publish this as being admitted.

14:32:56 11 We're looking at a -- a policy and procedure. This

14:33:11 12 is Plaintiffs' Exhibit 15. Okay. We're looking at policy

14:33:17 13 number A10-D, correct?

14:33:20 14 A. Yes.

14:33:20 15 Q. And is that the policy for the shift bidding process?

14:33:24 16 A. Yes, it is.

14:33:24 17 Q. Now, do commanders control in any way who gets what shift?

14:33:28 18 A. No, we do not.

14:33:29 19 Q. Okay. Are commanders in fact subject to this same shift

14:33:33 20 bidding process?

14:33:33 21 A. Yes, we are.

14:33:35 22 Q. Now, when does a shift generally start? If you're working

14:33:39 23 a 24-hour shift, what hour of the day does the shift change

14:33:43 24 take place?

14:33:43 25 A. A 24-hour shift -- the overwhelming majority of our shifts

14:33:49 1 start at 7 a.m.

14:33:50 2 Q. Okay. And for 12-hour shifts, it would be 7 a.m. and

14:33:53 3 7 p.m.?

14:33:53 4 A. Correct.

14:33:54 5 Q. And there are a few shifts that start an hour early or

14:33:57 6 something like that, correct?

14:33:58 7 A. At 6 a.m. and 6 p.m., yes.

14:34:00 8 Q. And why is the difference for the ambulances?

14:34:03 9 A. Because shift change requires personnel to come on and off

14:34:06 10 the ambulance. We have a staggered shift change so that we

14:34:09 11 don't have all our ambulances simultaneously doing shift change

14:34:14 12 and potentially delaying a response. So we kind of stagger it

14:34:18 13 across that hour period.

14:34:19 14 Q. And how do the paramedics start their shift? What's the

14:34:22 15 first thing they're required to do?

14:34:24 16 A. The oncoming paramedic will report to the station and meet

14:34:29 17 the off-going crew member. He'll receive equipment from

14:34:33 18 them -- the pagers, the keys, the radio, the narcotics for the

14:34:38 19 ambulance. They'll do an exchange. They'll get information as

14:34:41 20 to any deficiencies the vehicle had, any equipment

14:34:44 21 deficiencies. And then they'll go out and check their

14:34:49 22 apparatus and make sure the apparatus is functioning properly

14:34:53 23 and all the medical equipment is functioning properly.

14:34:56 24 Q. And once they get all their gear stored and everything --

14:34:59 25 and by the way, they're expected to be ready to go by 7 a.m. if

14:35:02 1 they have a 7 a.m. start, aren't they?

14:35:04 2 A. That's correct.

14:35:04 3 Q. All that stuff you just talked about, that's supposed to

14:35:07 4 happen and so they're ready to go by 7 a.m., correct?

14:35:11 5 A. That's correct.

14:35:11 6 Q. And if a medic is on 24-hour shift, what's the rule, if

14:35:15 7 any, with regards to sleeping during that 24-hour shift?

14:35:19 8 A. It's an EMS. We kind of do it -- they sleep when they

14:35:24 9 can.

14:35:24 10 Q. So hopefully they will get a sleeping period, but they're

14:35:28 11 always subject to call --

14:35:29 12 A. That's correct.

14:35:30 13 Q. -- twenty-four hours a day?

14:35:32 14 Now, let's talk about the vehicles that they use.

14:35:36 15 What sort of vehicles do the medics ride in?

14:35:40 16 A. We use -- all our medics use transport ambulances.

14:35:43 17 They're advanced life support ambulances. Some of the ones

14:35:47 18 with the introduction of the Medic I's are paramedic and EMTs

14:35:52 19 riding on an ambulance, but they're all capable of advanced

14:35:56 20 life support.

14:35:56 21 Q. And, generally, they run with two-member crews?

14:35:59 22 A. As a minimum, yes.

14:36:00 23 Q. Sometimes there's three for training purposes?

14:36:03 24 A. Yes. There's a cadet, possibly.

14:36:05 25 Q. And if there is a training situation, who generally

14:36:08 1 conducts that training?

14:36:09 2 A. It's the clinical specialist or captain.

14:36:12 3 Q. Now, you have a CADS dispatch system, don't you?

14:36:15 4 A. Yes, we do.

14:36:16 5 Q. CADS is an acronym. What does it stand for if you know?

14:36:20 6 A. It stands for Computer-Aided Dispatch System.

14:36:21 7 Q. Okay. And what does the CADS do with regard to the

14:36:26 8 ambulances? How, if at all, does it monitor them during their

14:36:29 9 shift?

14:36:30 10 A. Each one of our response apparatus in the Operations

14:36:33 11 Section is equipped with something called an AVL, an Automatic

14:36:37 12 Vehicle Locator. So basically via GPS, the CAD knows where all

14:36:42 13 our ambulances and all our supervisor vehicles are.

14:36:45 14 Based on that information, as a medical emergency

14:36:47 15 pops up, the CAD system will recognize the closest appropriate

14:36:52 16 unit to send, ambulances and command vehicles, and send them to

14:36:56 17 the emergency.

14:36:56 18 Q. Now, are you familiar with something called the dispatch

14:36:59 19 matrix?

14:36:59 20 A. Yes, I am.

14:37:00 21 Q. What is the dispatch matrix?

14:37:02 22 A. The dispatch matrix specifically is what our CAD system

14:37:07 23 uses to determine which ambulances, the number and type of

14:37:11 24 ambulance, or if an ambulance supervisor vehicle is sent to

14:37:14 25 certain medical emergencies.

14:37:17 1 Q. Are the ambulances considered part of the vehicles that
14:37:21 2 are tracked under the dispatch matrix?

14:37:23 3 A. Yes, they are.

14:37:24 4 Q. And they're tracked for what purpose?

14:37:26 5 A. They're tracked to see, one, where they are. If they're
14:37:30 6 the closest to an emergency, but also to check their
14:37:33 7 availability status. If they're already assigned to a call,
14:37:36 8 they can't be assigned to another call. So it checks their
14:37:39 9 availability.

14:37:40 10 Q. So does CADS understand the ambulances, then, to be part
14:37:43 11 of emergency response that's available?

14:37:45 12 A. Yes, they do.

14:37:46 13 Q. EMTs, paramedics, all of the medics, do they have the same
14:37:51 14 basic responsibilities during their shifts?

14:37:53 15 A. Yes, they do.

14:37:54 16 Q. I guess clinical specialists or captains have some
14:37:57 17 additional training responsibilities at times, correct?

14:38:00 18 A. Correct.

14:38:01 19 Q. Now, looking at those captains for a moment, can they
14:38:07 20 sometimes substitute for commanders like yourself?

14:38:10 21 A. Yes. They work a higher class and are able to fill in for
14:38:13 22 the commander if there's a vacancy.

14:38:15 23 Q. You mentioned earlier that you at one point took a
14:38:17 24 position as an acting commander back in the day, right?

14:38:21 25 A. Yes.

14:38:21 1 Q. Is a captain in some way sort of considered like an acting
14:38:25 2 commander?

14:38:26 3 A. It's similar.

14:38:27 4 Q. Let's talk about field commanders then. And that would be
14:38:31 5 people like yourself, correct?

14:38:32 6 A. Yes.

14:38:32 7 Q. Now, you're a spec ops commander. But, of course, we're
14:38:37 8 talking here about all of the field commanders, both spec ops
14:38:40 9 and regular field commanders. Okay?

14:38:42 10 A. Okay.

14:38:42 11 Q. Now, commanders, of course, are treated as exempt for
14:38:46 12 overtime purposes, correct?

14:38:47 13 A. Yes.

14:38:48 14 Q. And they're paid an hourly rate for all their hours
14:38:52 15 worked?

14:38:53 16 A. Yes, we are.

14:38:53 17 MR. COPPOLA: Objection, Your Honor. Leading.

14:38:55 18 THE COURT: Sustained.

14:38:56 19 MR. DEATS: I'll rephrase.

14:38:57 20 Q. (BY MR. DEATS) What's your understanding of how the
14:38:59 21 commanders are paid for the hours that they work?

14:39:01 22 A. Commanders are paid our straight regular rate hourly rate
14:39:07 23 for all hours worked in Operations.

14:39:09 24 Q. And when we looked at Defendant's Exhibit 36 a moment ago,
14:39:13 25 that had the hourly rates listed for the various positions,

14:39:16 1 including your own, correct?

14:39:18 2 A. Yes, it did.

14:39:19 3 Q. So if we want to know that hourly rate, we can go right to
14:39:23 4 the pay table which is Defendant's Exhibit 36?

14:39:25 5 A. Yes.

14:39:25 6 Q. Now, I want to ask you: Are you guaranteed a certain
14:39:34 7 salary without regard to the quantity or quality of your work?

14:39:38 8 MR. COPPOLA: Objection, Your Honor. Again, I think
14:39:40 9 this is trying to contradict the admission, and I object.

14:39:45 10 They're not allowed to do that.

14:39:47 11 THE COURT: Well, you're going to have to show me the
14:39:50 12 admission because the admissions are not in evidence.

14:39:52 13 MR. COPPOLA: Admission number one, Your Honor.

14:39:54 14 THE COURT: The admission number one that we read?

14:39:57 15 MR. COPPOLA: Yes, sir. It's Defendant's Exhibit 57.

14:40:11 16 THE COURT: All right. Now, how do you contend that
14:40:14 17 he is giving testimony that is different from the answer to the
14:40:20 18 admission.

14:40:21 19 MR. COPPOLA: I believe that the plaintiff is trying
14:40:23 20 to give testimony that he's not paid a salary, Your Honor, that
14:40:30 21 he's paid on an hourly basis. And the admission clearly states
14:40:33 22 that they are paid a salary.

14:40:35 23 THE COURT: Well, the admission is: Admit that you
14:40:38 24 earn or earned at least \$455 per week in salary.

14:40:43 25 I'm going to overrule the objection and allow

14:40:46 1 Mr. Deats to explore that. And you can revisit it on
14:40:49 2 cross-examination.

14:40:51 3 MR. COPPOLA: Thank you.

14:40:52 4 Q. (BY MR. DEATS) So back to the question: Are you
14:40:59 5 guaranteed a certain set salary each week without regards to
14:41:04 6 the number of hours that you work?

14:41:06 7 A. No, I am not.

14:41:07 8 Q. Okay. Has anyone ever told you that you're guaranteed a
14:41:11 9 certain salary without regards to the number of hours that you
14:41:14 10 work?

14:41:14 11 A. No, they have not.

14:41:15 12 Q. What happens if, for example, a district commander is late
14:41:18 13 to work for an hour and so only works 47 hours in a week? What
14:41:22 14 would you expect to happen based on your experience?

14:41:25 15 A. I would get docked an hour of pay.

14:41:27 16 Q. Is there in fact a term for that the EMS uses?

14:41:30 17 A. The term is "absent without leave," yes.

14:41:33 18 Q. Okay. Have you also heard of a term of called "zero
14:41:36 19 time"?

14:41:36 20 A. Zero time, yes.

14:41:37 21 Q. And so would you expect that a commander in fact would get
14:41:41 22 zero time for something like that?

14:41:42 23 A. Yes.

14:41:43 24 MR. COPPOLA: Objection, Your Honor. Calls for
14:41:44 25 speculation.

14:41:45 1 THE COURT: I'll sustain. You can restate the
14:41:48 2 question.

14:41:48 3 MR. DEATS: Okay.

14:41:49 4 Q. (BY MR. DEATS) I want to direct your attention -- and
14:42:06 5 let's not publish this yet -- to Plaintiffs' Exhibit 51. Do
14:42:30 6 you have before you what looks to be a Policy and Procedure of
14:42:34 7 Austin-Travis County EMS?

14:42:36 8 A. Yes, I do.

14:42:36 9 Q. Do you recognize this procedure?

14:42:38 10 A. Yes, I do.

14:42:39 11 Q. Could you describe it, please.

14:42:39 12 A. It's the procedure that governs light duty assignments?

14:42:43 13 Q. For personnel that, for example, are injured?

14:42:47 14 A. For any and all EMS personnel, yes.

14:42:49 15 Q. And does this appear to be a true and correct copy of the
14:42:52 16 actual policy and procedure?

14:42:54 17 A. Yes, it does.

14:42:55 18 MR. DEATS: Your Honor, at this time I ask that this
14:42:57 19 be admitted into evidence as Plaintiffs' Exhibit 51.

14:43:05 20 MR. COPPOLA: Your Honor, once again I object on the
14:43:07 21 basis that the plaintiff is attempting to introduce this
14:43:10 22 particular exhibit to contradict their clearly admitted
14:43:13 23 statement that they're paid a salary. That's what this exhibit
14:43:17 24 is intended for, and I'm objecting on that basis.

14:43:20 25 THE COURT: Mr. Deats?

14:43:20 1 MR. DEATS: Your Honor, we're not at all trying to
14:43:22 2 contradict the fact that we receive a salary of more than \$455
14:43:27 3 a week. However, there is an issue between the parties of
14:43:30 4 whether or not these plaintiffs are paid on a salary basis.
14:43:34 5 That is a term of art. Under the FLSA it means that you're
14:43:39 6 guaranteed a certain set amount each week that you work without
14:43:42 7 regard to the quality or quantity of work that is actually
14:43:46 8 performed. This testimony goes directly to that issue of
14:43:48 9 whether or not district commanders are guaranteed a weekly
14:43:51 10 salary that does not change because of quantity or quality of
14:43:56 11 work performed.

14:43:58 12 MR. COPPOLA: Your Honor, number one, I believe
14:44:00 13 Mr. Deats misstates the law with respect to public employees.
14:44:04 14 They -- they do not need to be guaranteed a salary if there's a
14:44:08 15 system of leave in place. And, number two, once again, there
14:44:10 16 was no objection to the admission, that it was unclear or that
14:44:13 17 it was vague. Plaintiffs clearly admitted that they are paid a
14:44:17 18 salary.

14:44:19 19 THE COURT: No. I'm going to overrule the
14:44:22 20 objection. I'm going to allow, again, as I said earlier,
14:44:26 21 Plaintiffs to prove the component parts of the admission to
14:44:32 22 admission number one, and you may cross-examine him on it. So
14:44:36 23 the objection is overruled.

14:44:37 24 Plaintiff's Exhibit No. 51 is admitted.

14:44:43 25 Q. (BY MR. DEATS) Okay. I'd like to ask you to turn your

14:44:45 1 attention now to page 2 of Exhibit 51. And we can go ahead and
14:44:49 2 publish this for the jury.

14:44:50 3 And I'm directing you towards the bottom half of the
14:44:58 4 page, the paragraph that starts with: "The employee who is
14:45:00 5 offered a light duty assignment may have the following
14:45:02 6 options." And if we could highlight that.

14:45:11 7 Under the policy, what's your understanding of what
14:45:13 8 happens to a 48-hour employee who gets a light duty assignment
14:45:17 9 that's a 40-hour office job?

14:45:19 10 A. If you're a 48-hour workweek employee and assigned to a
14:45:24 11 40-hour office job, you have the opportunity to either work 48
14:45:28 12 hours that week to make your salary or you're allowed to use
14:45:31 13 benefit time to make up the additional hours.

14:45:34 14 Q. And if you don't do either of those two things, if you
14:45:38 15 look at the last bullet there, what happens to that employee
14:45:43 16 that has a 48-hour job but gets a light duty assignment that
14:45:48 17 covers only a 40-hour office a week?

14:45:51 18 A. The employee would receive leave without pay for those
14:45:54 19 remaining hours.

14:45:55 20 Q. Okay. Does this policy, if you know, apply to district
14:45:59 21 commanders?

14:45:59 22 A. Yes, it does.

14:46:00 23 Q. So if a district commander is hurt and is given a light
14:46:06 24 duty job in the office, 40 hours, there's a chance they won't
14:46:09 25 be paid for the full 48 unless they use leave. Correct?

14:46:12 1 MR. COPPOLA: Objection, Your Honor. This calls for
14:46:14 2 speculation and leading.

14:46:15 3 THE COURT: Well, I'll sustain as to leading.

14:46:18 4 Q. (BY MR. DEATS) Well, in fact, do you know whether or not
14:46:34 5 this has been put into place for employees who are district
14:46:38 6 commanders?

14:46:38 7 A. Yes, it has.

14:46:40 8 Q. I'll ask you to turn your attention to Plaintiffs'
14:46:43 9 Exhibit 54. And let's not publish that.

14:47:01 10 Let's talk about another situation. Now, we talked
14:47:03 11 about getting shifts under the shift bidding procedure, did we
14:47:07 12 not?

14:47:07 13 A. Yes, we did.

14:47:07 14 Q. And how often do you get to bid for a new shift, a new
14:47:11 15 duty station, a new time, et cetera?

14:47:13 16 A. Approximately every six months.

14:47:15 17 Q. And do you know whether or not it occurs that when you
14:47:19 18 change from one shift to another, that it affects the number of
14:47:22 19 hours that you work in a week?

14:47:23 20 A. It can.

14:47:24 21 Q. And how -- can it affect it so that you may have fewer
14:47:28 22 than 48 hours that you're scheduled to work in a week because
14:47:31 23 of the change in your shift?

14:47:32 24 A. Yes.

14:47:33 25 Q. And do you know what -- and, of course, you indicated that

14:47:39 1 both district commanders and employees under them are subject
14:47:42 2 to this shift bidding process, correct?

14:47:44 3 A. Yes, we are.

14:47:45 4 Q. If a commander, because of a change in their bid, works
14:47:48 5 fewer than 48 hours in a week during that shift change, what
14:47:52 6 happens? Are they nonetheless paid for the 48 hours of work?

14:47:56 7 A. No, they are not.

14:47:57 8 Q. What is your understanding of what occurs?

14:47:59 9 A. My understanding is you are allowed to make up the
14:48:02 10 difference with benefit time or subject to not being paid for
14:48:08 11 those hours that you are missing.

14:48:10 12 Q. And if we look at Plaintiffs' Exhibit 54 -- and let's not
14:48:15 13 publish that yet -- do you recognize this as a document that
14:48:20 14 relates to one of these situations?

14:48:22 15 A. Yes, it is.

14:48:22 16 Q. And did you come into possession of this document
14:48:25 17 recently?

14:48:26 18 A. Yes.

14:48:26 19 Q. And could you describe it for me.

14:48:28 20 A. It's an E-mail from our scheduling supervisor to one of
14:48:31 21 the district commanders, also including a CC to the division
14:48:36 22 chief over that specific division. This is the exact situation
14:48:42 23 that, because she moved from one schedule to another, it puts
14:48:47 24 her in a shift conflict which would result in her not being
14:48:51 25 paid the full 48 hours that week.

14:48:54 1 Q. Okay. And does this appear to be a true and correct copy
14:48:57 2 of the document you received recently reflecting this E-mail
14:49:00 3 exchange?

14:49:01 4 A. Yes, it is.

14:49:02 5 MR. DEATS: Your Honor, I ask that this be admitted
14:49:04 6 as Plaintiffs' Exhibit 54.

14:49:06 7 MR. COPPOLA: Your Honor, I have the same objection
14:49:07 8 with respect to the admission, and I also object that this
14:49:11 9 document was not produced during the discovery period.

14:49:15 10 MR. DEATS: Your Honor, with regard to the latter
14:49:17 11 part of the objection, I think the Court will notice that this
14:49:20 12 document was sent on October 17th, 2012, so the document wasn't
14:49:26 13 created until after the discovery period had run. You'll
14:49:30 14 notice that we did promptly put a Bates label on it and provide
14:49:33 15 it to the defendants at that time. So I don't think that's a
14:49:38 16 fair objection.

14:49:38 17 THE COURT: Mr. Coppola, when did you receive a copy
14:49:41 18 of the exhibit?

14:49:42 19 MR. COPPOLA: I believe about a week ago, Your Honor.

14:49:45 20 THE COURT: All right. And Mr. Deats, how do you
14:49:49 21 respond to the first part of the objection?

14:49:51 22 MR. DEATS: Your Honor, with regards to first part of
14:49:54 23 the objection, I believe that the admission does not constitute
14:49:57 24 an admission that the employees are paid on a salary basis for
14:50:01 25 the same reason that I stated earlier. That is a term of art

14:50:05 1 under the FLSA. Although Mr. Coppola and I may disagree about
14:50:09 2 what it means, it certainly is not an admission that he wants
14:50:13 3 to make it into.

14:50:14 4 THE COURT: Well, again, I'm going to deny the
14:50:17 5 objection with regard to whether it's a conflict with the
14:50:20 6 admissions. I think it's part of building up to what was
14:50:25 7 admitted, and the City can cross-examine on it. I will also
14:50:31 8 overrule the objection to the late disclosure. I find that it
14:50:35 9 was disclosed as soon as it was available and there is no
14:50:41 10 question as to its authenticity. And so I will overrule the
14:50:48 11 objection.

14:50:48 12 Plaintiff's Exhibit No. 54 is admitted.

14:50:54 13 MR. DEATS: And let's go ahead and publish that to
14:50:57 14 the jury, then.

14:50:57 15 Q. (BY MR. DEATS) And I'm looking at the first page of the
14:51:00 16 exhibit. It's P-2853. Do you see that?

14:51:04 17 A. Yes, I do.

14:51:04 18 Q. And this is a situation in which the employee was given
14:51:08 19 four options when she had fewer than 48 hours in a week due to
14:51:12 20 a shift change?

14:51:13 21 A. That's correct.

14:51:14 22 Q. And one of those options was no pay for the hours that she
14:51:23 23 would miss because of that?

14:51:24 24 A. That's correct.

14:51:30 25 Q. And, of course, commanders do get a straight hourly rate

14:51:33 1 for all the hours that they work over 40, correct?

14:51:36 2 A. Yes, we do.

14:51:36 3 Q. The same hourly rate that you get for hours under 40 in a

14:51:41 4 week?

14:51:41 5 A. Correct.

14:51:41 6 Q. And if you work an extra shift, you do get paid straight

14:51:45 7 time, do you not?

14:51:45 8 A. Yes, we do.

14:51:46 9 Q. Let's talk about field commander work schedules. What

14:51:51 10 sort of a work schedule do you keep?

14:51:53 11 A. I'm currently assigned two 24-hour shifts a week.

14:51:57 12 Q. Is the same true for all of the district commanders?

14:52:00 13 A. All the field district commanders, yes.

14:52:02 14 Q. And we are talking about just the field commanders right

14:52:05 15 now. And, of course, that's all the plaintiffs except one of

14:52:07 16 them in this case, is it not?

14:52:09 17 A. Correct.

14:52:09 18 Q. Now, you don't have this sort of 12-hour shift thing, but

14:52:14 19 you all do work 48 hours a week, then?

14:52:16 20 A. Yes.

14:52:17 21 Q. Now, what about assignment commanders? You've indicated

14:52:29 22 they're assigned to a district, right?

14:52:29 23 A. Yes.

14:52:29 24 Q. Six on duty at any one time to cover the six districts?

14:52:32 25 A. Correct.

14:52:32 1 Q. And what sort of a vehicle are you assigned?

14:52:35 2 A. We're in ALS first response vehicle.

14:52:38 3 Q. Sometimes referred to as a command vehicle?

14:52:40 4 A. Correct.

14:52:40 5 Q. And what about your location? Where are you stationed?

14:52:46 6 A. Our command districts are stationed around Travis County.

14:52:50 7 It's 1100 square miles for us to cover, so we're geographically

14:52:54 8 placed so that we can cover the various parts of it with some

14:52:57 9 degree of certainty.

14:52:58 10 Q. Okay. So you're housed in a station rather than the

14:53:02 11 headquarters office, for example?

14:53:02 12 A. That's correct. We're housed usually at EMS stations or

14:53:05 13 fire stations with an ambulance.

14:53:06 14 Q. When you say you're housed in EMS stations, is it

14:53:09 15 sometimes that you're stationed in a station along with a

14:53:12 16 paramedic crew?

14:53:13 17 A. Yes.

14:53:14 18 Q. And your 24-hour shifts, when do they start?

14:53:24 19 A. At 7 a.m.

14:53:25 20 Q. And how do you start your shift each day? You talked

14:53:28 21 about how the medics start their shift. How do you start your

14:53:32 22 shift?

14:53:32 23 A. It's very similar. I arrive on duty. I meet the oncoming

14:53:36 24 district -- the off-going district commander. I receive

14:53:41 25 radios, pagers, keys, narcotics, a shift report from them about

14:53:46 1 what happened during their shift, deficiencies of my vehicle,
14:53:50 2 equipment problems that I may have from my vehicle. I remove
14:53:54 3 their gear from the truck. I place my response gear on there.
14:53:56 4 I check out my apparatus to make sure the medical equipment is
14:54:01 5 functioning properly and present. I check the apparatus to
14:54:04 6 make sure it functions properly and present.

14:54:07 7 Q. And you mentioned that your command vehicle is an advanced
14:54:09 8 life support vehicle, correct?

14:54:10 9 A. That's correct.

14:54:11 10 Q. And how, if at all, does it differ from the ambulances
14:54:15 11 that the medics use?

14:54:16 12 A. It carries all the same equipment as the ambulance except
14:54:21 13 for the stretcher. We don't transport people to the hospital
14:54:23 14 in a command vehicle.

14:54:24 15 Q. Does that mean you don't ever assist in transports, then?

14:54:28 16 A. No, it does not.

14:54:29 17 Q. And we'll get to that a little bit later. Now, given that
14:54:32 18 you don't carry a stretcher, do you recall whether or not you
14:54:35 19 carry any equipment an ambulance doesn't carry?

14:54:39 20 A. Yes, we do.

14:54:40 21 Q. What types of equipment might you have that an ambulance
14:54:43 22 does not?

14:54:43 23 A. We carry certain monitors like a carbon monoxide detector
14:54:48 24 which allow us to level blood levels of carbon monoxide when
14:54:48 25 people are exposed to that. We also carry a Stokes basket,

14:54:52 1 which is kind of rescue litter that we can go ahead and place
14:54:56 2 patients in that are in wilderness environments, on cliff
14:55:00 3 sides, or things of that nature.

14:55:02 4 Q. Somebody falls off of Mount Bonnell, for example, you
14:55:04 5 might use a Stokes basket?

14:55:05 6 A. That's correct.

14:55:06 7 Q. And that has happened on occasion?

14:55:08 8 A. Yes, it has. More than once.

14:55:10 9 Q. What about a cyanide antidote kit?

14:55:14 10 A. Yes. We carry that as well.

14:55:16 11 Q. Okay. Where might that prove useful.

14:55:18 12 A. In industry around here, chemicals that are used sometimes
14:55:22 13 are toxic along that nature. And cyanide antidote kits are --
14:55:26 14 within minutes, someone can die from cyanide poisoning. And to
14:55:30 15 have that available is necessary.

14:55:31 16 Q. Is that sometimes a consideration at fire scenes?

14:55:34 17 A. Yes, it is.

14:55:38 18 Q. So might that be another place where you would use a
14:55:38 19 cyanide antidote kit?

14:55:40 20 A. Possibly.

14:55:40 21 Q. Any other types of equipment that you carry that the
14:55:43 22 ambulance doesn't that you can think of?

14:55:45 23 A. I carry an AED, Automatic External Defibrillator, the
14:55:52 24 ambulances don't routinely carry.

14:55:55 25 Q. Do they have equipment that they can use sometimes for the

14:55:57 1 same purpose?

14:55:58 2 A. Yes, they do.

14:55:59 3 Q. Okay. And what would that be?

14:56:00 4 A. They have a cardiac monitor which performs basically the

14:56:02 5 same function as my AED does.

14:56:04 6 Q. Okay. And do you also have a cardiac monitor?

14:56:06 7 A. Yes, I do.

14:56:07 8 Q. Now, this extra equipment that you carry, does that

14:56:12 9 require your dispatch to certain types of calls?

14:56:16 10 A. Yes, it does.

14:56:17 11 Q. Because you have the equipment that the ambulance does

14:56:20 12 not?

14:56:21 13 A. That's correct.

14:56:21 14 Q. Now, we talked about the dispatch matrix. Are command

14:56:25 15 vehicles carried in the dispatch matrix?

14:56:27 16 A. Yes.

14:56:28 17 Q. And what does that mean? Are you considered part of the

14:56:30 18 vehicles ready and able to assist in medical emergencies?

14:56:33 19 A. Yes. The CAD system tracks us just like it does the

14:56:36 20 ambulances. It realizes we don't transport people to the

14:56:40 21 hospital, but it knows our capabilities.

14:56:42 22 Q. And besides the ambulances and your vehicles, are there

14:56:47 23 other vehicles that the dispatch matrix keeps track of as part

14:56:51 24 of the emergency response team?

14:56:54 25 A. Not routinely, no.

14:56:55 1 Q. Okay. Let's talk about the division chiefs and above.

14:56:58 2 You're supervised by a division chief, are you not?

14:57:00 3 A. Yes, I am.

14:57:01 4 Q. And there are two divisions chiefs over Operations?

14:57:07 5 A. That's correct.

14:57:07 6 Q. And they're considered exempt for overtime purposes?

14:57:10 7 A. Yes, they are.

14:57:11 8 Q. What sort of workweek do they work?

14:57:13 9 A. They work 40-hour weeks at headquarters.

14:57:18 10 Q. I may have misheard. They work what hours?

14:57:20 11 A. They work 40-hour weeks.

14:57:21 12 Q. Forty hours a week?

14:57:23 13 A. Yes. Forty.

14:57:24 14 Q. Okay. And sort of a Monday through Friday assignment?

14:57:26 15 A. Generally, yes.

14:57:28 16 Q. Are they assigned to a station? Where do they report to

14:57:32 17 work?

14:57:32 18 A. They report to work at our headquarters.

14:57:35 19 Q. They obviously don't do shift work if they work a 40-hour

14:57:39 20 a week, do they?

14:57:40 21 A. No, they do not.

14:57:41 22 Q. Their vehicles, what sort of vehicles are they given?

14:57:44 23 A. They have Tahoes that they use.

14:57:47 24 Q. Okay. And are they considered ALS response vehicles?

14:57:50 25 A. No, they are not.

14:57:52 1 Q. Are they routinely dispatched to calls?

14:57:57 2 A. Not routinely, no.

14:57:59 3 Q. And does CADS keep track of their whereabouts for purposes

14:58:03 4 of dispatch to medical emergencies?

14:58:05 5 A. Not routinely, no.

14:58:06 6 Q. Are they considered an available resource for response to

14:58:10 7 medical emergencies?

14:58:12 8 A. Not routinely.

14:58:13 9 Q. I want to take a moment now and talk a little bit about

14:58:16 10 the history of this dispute. And I'm going to take you back to

14:58:22 11 the year 2006. You heard the testimony that you may -- you

14:58:26 12 heard the opening statements, didn't you?

14:58:29 13 A. Yes, I did.

14:58:29 14 Q. Okay. Kind of made a deal, and now you're not living up

14:58:33 15 to it?

14:58:34 16 A. Yes, I did.

14:58:35 17 Q. Let's talk about 2006. Did anything happen in 2006 --

14:58:39 18 A. Yes.

14:58:39 19 Q. -- that made you question your status?

14:58:41 20 A. Yes, it did.

14:58:41 21 Q. And what was that?

14:58:42 22 A. In 2006 there was a change in our workweek. We went from

14:58:51 23 being on 24 on, 48 off shifts, which was an average of a

14:58:55 24 56-hour workweek to 48-hour workweek.

14:58:58 25 Q. And in the context of that, did you learn anything about

14:59:03 1 the job of a -- excuse me -- of a district commander as a first
14:59:10 2 responder?

14:59:11 3 A. Yes.

14:59:12 4 Q. Okay. And what do you recall finding out in 2006?

14:59:17 5 A. In 2006 the changes that were being made, we questioned
14:59:26 6 how we were being compensated at that point.

14:59:29 7 Q. And in the context of that, did you learn that there had
14:59:32 8 been some new rulings or regulations that had come down from
14:59:34 9 the Department of Labor?

14:59:36 10 MR. COPPOLA: Your Honor, I'm just going to object to
14:59:37 11 relevance in terms of issues that are before the jury.

14:59:41 12 THE COURT: Mr. Deats?

14:59:42 13 MR. DEATS: Your Honor, these -- this goes to two
14:59:45 14 issues. Of course, it goes to the issue of good faith. But it
14:59:48 15 also goes to the issue of the consistency of the EMS position
14:59:54 16 over the years as it regards to this subject and also to the
14:59:58 17 credibility of their witnesses to some extent.

15:00:01 18 THE COURT: They haven't called any witnesses yet.

15:00:04 19 MR. DEATS: They haven't, Your Honor, and of course I
15:00:05 20 am anticipating some testimony here. But, you know, the
15:00:08 21 parties have engaged in quite a bit of discovery, and I know
15:00:11 22 the position they're taking. And so while I've got this
15:00:15 23 witness on the stand, I'm trying to get all the evidence he has
15:00:17 24 that relate to all of the subjects.

15:00:19 25 THE COURT: I will overrule the objection.

15:00:22 1 Q. (BY MR. DEATS) Now, let's back up for a moment and let's
15:00:26 2 talk about the job description that was in effect in 2006.
15:00:31 3 I'll ask you, if you would, to turn your attention to
15:00:34 4 Plaintiffs' Exhibit 1. Do you recognize that document?
15:00:46 5 A. Yes, I do.
15:00:46 6 Q. Could you describe it?
15:00:48 7 A. It's an EMS district commander job description dated --
15:00:52 8 approved December 1st, 2001. I'm sorry. 2000. It says last
15:00:58 9 revised April 23rd, 2001.
15:01:01 10 Q. And it's a multipage document. And, of course, you were
15:01:04 11 employed when this job description was in effect, were you not?
15:01:07 12 A. Yes, I was.
15:01:08 13 Q. And does this appear to you to be a true and correct copy
15:01:11 14 of the job description?
15:01:12 15 A. Yes, it does.
15:01:12 16 MR. DEATS: Your Honor, I ask that this be admitted
15:01:14 17 as Plaintiffs' Exhibit 1
15:01:17 18 THE COURT: Mr. Coppola?
15:01:18 19 MR. COPPOLA: Your Honor, I object to the relevance
15:01:19 20 of this exhibit. The parties have stipulated that the relevant
15:01:22 21 period in this case is about April 2009 to the present. This
15:01:26 22 job -- this job description went out of effect in 2008.
15:01:30 23 THE COURT: Mr. Deats, it's pretty remote.
15:01:32 24 MR. DEATS: Your Honor, we -- this wasn't in effect
15:01:37 25 until 2008. But if allowed to proceed, I think he's going to

15:01:40 1 testify that this job description is in fact the job
15:01:42 2 description that most accurately talks about what the district
15:01:46 3 commanders actually do today.

15:01:48 4 THE COURT: Well, I'm going to sustain the objection
15:01:51 5 to the exhibit. You may ask him questions about what the
15:01:57 6 commanders do today. And then my ruling is without prejudice
15:02:02 7 to your re-offering it if you can link it up to an issue that
15:02:07 8 is relevant in this case.

15:02:09 9 MR. DEATS: Okay. Your Honor, may I allow the
15:02:19 10 witness to refer to this exhibit?

15:02:20 11 THE COURT: He may refer to the exhibit to refresh
15:02:22 12 his memory, but he can't testify from the exhibit.

15:02:25 13 MR. DEATS: Very good, Your Honor.

15:02:26 14 Q. (BY MR. DEATS) Okay. I'll ask you, if you could, to look
15:02:31 15 at pages 2 through 3 of the exhibit. Read those to yourself
15:02:36 16 quickly and indicate to me when you've finished?

15:02:40 17 A. (Reviews document)

15:03:02 18 Okay.

15:03:02 19 Q. Now, do you recall whether or not today -- and I'm talking
15:03:05 20 about today, right now. Okay?

15:03:08 21 When you respond to emergency calls, do you respond
15:03:10 22 to provide medical care in support of the system?

15:03:13 23 A. Yes, I do.

15:03:13 24 Q. Do you recall whether or not you respond to emergency
15:03:16 25 calls as required to provide medical incident command?

15:03:19 1 A. Yes, I do.

15:03:20 2 Q. Do you recall whether or not you're required to check the

15:03:24 3 condition of your vehicle, to make sure that it's ready to go

15:03:26 4 and that it meets all the specifications needed to engage in

15:03:29 5 emergency response?

15:03:30 6 A. Yes, I do.

15:03:31 7 Q. Are you required to respond to requests for assistance,

15:03:36 8 specifically requests for medical assistance?

15:03:38 9 A. Yes, I am.

15:03:39 10 Q. Things like responding to scenes of illness or injury?

15:03:42 11 A. Yes.

15:03:42 12 Q. Things like determining situational needs and providing

15:03:47 13 scene safety at an emergency site?

15:03:50 14 A. Yes.

15:03:50 15 Q. Locate all victims involved in an emergency. Is that part

15:03:54 16 of your job?

15:03:54 17 A. Yes, is.

15:03:55 18 Q. Do you know whether or not you coordinate and direct the

15:03:57 19 activities of other public safety personnel at times?

15:04:01 20 MR. COPPOLA: Your Honor, he's simply leading the

15:04:03 21 witness through the exhibit. He's testifying --

15:04:04 22 THE COURT: Sustained as to leading. Ask him the

15:04:09 23 questions.

15:04:10 24 MR. DEATS: Very good, Your Honor.

15:04:11 25 Q. (BY MR. DEATS) What -- what, if anything, do you do with

15:04:13 1 regard to patient assessment when you make a call?

15:04:17 2 A. I do what any other paramedic would do on a patient

15:04:21 3 assessment. I perform primary and secondary surveys, vital

15:04:25 4 signs, place them on a cardiac monitor if necessary to do a

15:04:28 5 full thorough assessment of the patient, medical or trauma

15:04:31 6 patient, to determine best course of treatment.

15:04:33 7 Q. Okay. And are these things, if you know -- and we'll

15:04:37 8 cover them in a moment -- but are these things that are

15:04:39 9 reflected in your current job description, all these things

15:04:42 10 that you just described?

15:04:44 11 A. No, they are not.

15:04:45 12 Q. Okay. But they were in this job description that was in

15:04:48 13 effect in 2006 when this controversy arose, correct?

15:04:52 14 MR. COPPOLA: Your Honor, again, I have to object to

15:04:54 15 the leading question. And, again, he's just testifying. He

15:04:56 16 just testified for the jury what's in the exhibit.

15:05:00 17 THE COURT: Well, it is leading. It's my ruling that

15:05:02 18 the 2000 job description is not relevant to what we're

15:05:08 19 discussing here and you haven't tied it to something that's

15:05:11 20 relevant at this point. I'm going to sustain the objection.

15:05:20 21 MR. DEATS: Okay. Very good, Your Honor.

15:05:23 22 Q. (BY MR. DEATS) Let me ask it this way: Has your job with

15:05:26 23 regards to patient care changed since you became commander in

15:05:32 24 2002?

15:05:33 25 A. Yes.

15:05:33 1 Q. In what way?

15:05:35 2 A. We've become more active in patient care. We're required

15:05:37 3 to do more patient care, run a higher number of calls, run more

15:05:42 4 severe calls in the system.

15:05:45 5 Q. And back to 2006 -- you mentioned a moment ago that you

15:05:53 6 became aware of a regulation in 2006. What do you recall

15:05:58 7 becoming aware of at that point in time?

15:06:00 8 A. In 2006 we became aware of a regulation that was an FLSA

15:06:04 9 ruling on first responders and basically their classification.

15:06:10 10 Q. Okay. And whether or not they were entitled to overtime

15:06:14 11 pay?

15:06:14 12 A. That's correct.

15:06:15 13 Q. And what, if anything, did you do when you became aware of

15:06:18 14 this regulation?

15:06:19 15 A. Initially we brought this information to our department

15:06:22 16 director.

15:06:23 17 Q. And who was the department director at the time?

15:06:26 18 A. At the time it was Richard Herrington.

15:06:29 19 Q. And what, if anything, did Mr. Herrington direct you to

15:06:33 20 do?

15:06:33 21 A. At the time Mr. Herrington said that he would look into it

15:06:37 22 and send it to our Human Resources Department.

15:06:41 23 Q. And do you recall whether or not you ended up having

15:06:45 24 discussions with the HR department?

15:06:46 25 A. Yes, we did.

15:06:47 1 Q. And do you recall who you spoke to in HR?

15:06:49 2 A. Yes, I do.

15:06:50 3 Q. Who was that?

15:06:51 4 A. It was Sylvia Gonzalez, and there were some

15:06:53 5 representatives from the City. I believe one of the City

15:06:56 6 attorneys, Robin Sanders, was there as well.

15:06:58 7 Q. Now, you mentioned Sylvia Gonzalez. Is she today known as

15:07:02 8 Sylvia Flores?

15:07:03 9 A. Yes, she is.

15:07:07 10 Q. And at that point in time, when you had this discussion

15:07:10 11 with them, did you tell them about this new regulation you were

15:07:13 12 aware of?

15:07:13 13 A. Yes, we did.

15:07:14 14 Q. And what, if anything, did they tell you they would do in

15:07:18 15 response?

15:07:18 16 A. They told us again that they would look into our claim;

15:07:22 17 that this was a fairly new ruling as far as they knew; and that

15:07:25 18 they would get back to us.

15:07:26 19 Q. Okay. And then if I could direct your attention to

15:07:29 20 Plaintiffs' Exhibit 2.

15:07:32 21 Now, the conversation with Ms. Flores, at that -- do

15:07:35 22 you recall when about that occurred?

15:07:38 23 A. It was in the fall of 2006. I don't know the exact date.

15:07:46 24 Q. Okay. Early fall? Late fall? Do you recall?

15:07:49 25 A. Early fall. Sometime around probably August or September.

15:07:52 1 Q. Okay. And then turning your attention to Plaintiffs' Exhibit 2, do you recognize this document?

15:07:57 2 A. Yes, I do.

15:07:57 3 Q. Could you describe it for me?

15:07:59 4 A. It's an E-mail that was forwarded to me -- actually, it

15:08:04 5 was an E-mail from the division chief at the time regarding a

15:08:08 6 draft of the district commander job description.

15:08:10 7 Q. And what's the date on this memorandum?

15:08:13 8 A. Friday, October 20th, of 2006.

15:08:19 9 Q. And did you receive a copy of this?

15:08:21 10 A. I was forwarded a copy of this, yes.

15:08:24 11 Q. And then if I could direct your attention to Plaintiffs'

15:08:26 12 Exhibit 3, was there an attachment to that E-mail?

15:08:29 13 A. Yes, there was.

15:08:30 14 Q. And what was in the attachment?

15:08:32 15 A. It was a draft job description -- district commander job

15:08:37 16 description.

15:08:38 17 Q. And does this appear to be a true and correct copy of the

15:08:41 18 draft that you received on or about October 20th, of 2006?

15:08:45 19 A. Yes, it is.

15:08:46 20 MR. DEATS: Your Honor, at this time I ask that

15:08:47 21 Plaintiffs' Exhibit 2 and 3 be admitted.

15:08:51 22 MR. COPPOLA: Your Honor, I -- both of these --

15:08:54 23 neither of these exhibits are relevant to the issues at hand.

15:08:59 24 The 2006 draft job description, number one, I don't believe

15:09:02 1 ever went into effect and, number two, again, is outside the
15:09:06 2 relevant period. And the connection Mr. Deats is trying to
15:09:10 3 make here between the complaints raised by district commanders
15:09:14 4 in late 2006 and the promulgation of this draft job description
15:09:20 5 is nothing but speculation, that they're somehow connected in
15:09:24 6 some way.

15:09:24 7 THE COURT: Mr. Deats?

15:09:25 8 MR. DEATS: Your Honor, although the relevant period
15:09:27 9 for back pay purposes commences in 2009, this is a dispute with
15:09:33 10 a long-standing history that dates back to 2006. It goes both
15:09:37 11 to the issue of the City's good faith, which the Court will
15:09:41 12 have to rule upon. It also goes just to the changing position
15:09:44 13 of the City over time. We do think it's important to our case
15:09:48 14 that both of these things be provided. It clearly is relevant
15:09:53 15 to those issues, and we would ask that it be admitted for that
15:09:57 16 reason.

15:09:57 17 THE COURT: Did the 2006 policy described in
15:10:00 18 Plaintiffs' Exhibit Number 3 ever take effect?

15:10:04 19 MR. DEATS: Your Honor, it was ultimately replaced by
15:10:07 20 another policy in 2008. So, no, it never went into effect.

15:10:12 21 THE COURT: But there was a policy in 2008 that went
15:10:15 22 into effect?

15:10:16 23 MR. DEATS: Your Honor, there was a policy that went
15:10:18 24 into effect in 2008.

15:10:21 25 THE COURT: Then I'm going to sustain the objection.

15:10:23 1 I think it's clear that there was a dispute beginning in 2006,
15:10:28 2 but I'm not going to admit policies that did not take effect.
15:10:33 3 So the objection is sustained to Plaintiffs' Exhibits 2 and 3.
15:10:38 4 MR. DEATS: Okay.
15:10:45 5 Q. (BY MR. DEATS) So to recap, then, had a discussion with
15:10:49 6 Sylvia Flores in August or September of 2006, correct?
15:10:51 7 A. Yes.
15:10:52 8 Q. And then October 2006 you received a memorandum about
15:10:56 9 changing your job description?
15:10:57 10 A. Yes.
15:10:58 11 Q. And as we just covered, that draft job description never
15:11:03 12 in fact went into effect?
15:11:05 13 A. That's correct.
15:11:15 14 Q. So moving on to 2006, there were no changes to your
15:11:19 15 status, I take it, in 2006 with regards to overtime, correct?
15:11:23 16 A. Correct.
15:11:23 17 Q. At some point in time, did you seek outside assistance?
15:11:26 18 A. Yes, we did.
15:11:26 19 Q. What type of assistance did you seek?
15:11:29 20 A. My colleagues and I retained an attorney through our union
15:11:32 21 and brought this information forward.
15:11:33 22 Q. And just so it's absolutely clear, that attorney was not
15:11:37 23 me, was it?
15:11:38 24 A. No, it was not.
15:11:38 25 Q. And who was that attorney, if you recall?

15:11:40 1 A. That attorney was Tom Stribling.

15:11:44 2 Q. And what, if anything, did Mr. Stribling, your union

15:11:48 3 attorney, do for you?

15:11:49 4 A. At that point he drafted a letter to our director

15:11:53 5 explaining our situation and that he believed that our

15:11:57 6 department was in violation of the Fair Labor Standards Act's

15:12:01 7 recent ruling on first responders and advised them to look into

15:12:05 8 it and correct it.

15:12:06 9 Q. Okay. And then do you recall whether or not your

15:12:11 10 department director took any action in response to that request

15:12:14 11 by Mr. Stribling?

15:12:16 12 A. Yes, he did.

15:12:17 13 Q. What, if anything, do you recall him doing?

15:12:19 14 A. Shortly after that, a letter was received by our

15:12:22 15 department director that our Human Resources Department -- the

15:12:25 16 City's Human Resources Department conducted a series of desk

15:12:29 17 audits of the district commanders' job positions.

15:12:32 18 Q. And I'll ask you to turn your attention to Plaintiffs'

15:12:34 19 Exhibit 34.

15:12:46 20 A. Okay.

15:12:47 21 Q. Now, do you recognize this document?

15:12:49 22 A. Yes, I do.

15:12:49 23 Q. What is it?

15:12:50 24 A. It is an E-mail from then-director Richard Herrington to

15:12:55 25 all the district commanders entitled Desk Audit Legal Review of

15:12:58 1 FLSA Issues.

15:13:00 2 Q. And what's the date on the document?

15:13:02 3 A. It's dated Monday, December the 11th, 2006.

15:13:05 4 Q. And it went to whom?

15:13:07 5 A. It went to all of the EMS district commanders, all of the

15:13:11 6 EMS division commanders, Ernesto Rodriguez and Chris Callsen.

15:13:15 7 Q. And do you recall receiving a copy of this?

15:13:17 8 A. Yes, I did.

15:13:18 9 Q. Does this appear to be a true and correct copy of the

15:13:21 10 original?

15:13:21 11 A. Yes, it is.

15:13:22 12 MR. DEATS: I ask that this be admitted as

15:13:24 13 Plaintiffs' Exhibit 34.

15:13:26 14 MR. COPPOLA: Your Honor, I don't have any objection

15:13:28 15 to this exhibit being admitted for the limited purpose of the

15:13:31 16 Court determining the good faith issue. I don't believe it's

15:13:35 17 relevant to the ultimate questions to be decided by the jury in

15:13:39 18 this case as to whether commanders are exempt or nonexempt or

15:13:42 19 the questions they'll be asked to decide.

15:13:44 20 THE COURT: Mr. Deats?

15:13:45 21 MR. DEATS: Your Honor, I do believe it has some

15:13:48 22 relevance there. The City, as you know, is going to put on an

15:13:51 23 expert witness who became involved actually in the case at this

15:13:54 24 point. And this is all the lead-up to that. It's background

15:13:57 25 information that I think is important for the jury to know in

15:14:00 1 evaluating her testimony.

15:14:03 2 THE COURT: Mr. Coppola, anything further?

15:14:08 3 MR. COPPOLA: Your Honor, if it's somehow relevant to
15:14:11 4 the testimony of Ms. Dulaney Smith, then perhaps Mr. Deats can
15:14:15 5 offer it at that time. But I think it's at least premature to
15:14:19 6 offer it now. I don't have any objection, again, to the Court
15:14:22 7 considering it for good faith, but I have an objection to the
15:14:25 8 jury considering it at this time.

15:14:26 9 THE COURT: Well, Mr. Deats, I'm going to give you a
15:14:28 10 little leeway, but not a lot, on anticipating what somebody
15:14:32 11 else is going to say. That really is what rebuttal is for and
15:14:35 12 why the plaintiff gets rebuttal. So I'm not going admit this
15:14:39 13 exhibit at this time as in any way testimony in opposition to
15:14:50 14 the proposed expert by the defendant, if the defendant does in
15:14:55 15 fact call an expert.

15:14:58 16 I will admit it for the limited purpose of showing
15:15:03 17 that this is likely when the dispute that I have before me got
15:15:09 18 started, but not at this time for the truth of anything that is
15:15:13 19 set forth in the exhibit.

15:15:14 20 MR. DEATS: Very good, Your Honor.

15:15:15 21 May we publish it, Your Honor?

15:15:17 22 THE COURT: You may.

15:15:27 23 MR. DEATS: And if we could blow up the text.

15:15:38 24 Q. (BY MR. DEATS) Now, I'm looking at the paragraph marked
15:15:41 25 "First." And this is talking about the desk audit that you

15:15:44 1 referred to a moment ago, correct, that HR said they were going
15:15:48 2 to do?

15:15:48 3 A. Yes, it is.

15:15:49 4 Q. And were told that it would be your chance -- the last
15:15:52 5 sentence of that paragraph, "Your chance to convey to them what
15:15:55 6 you really do versus what others might think you do"?

15:15:58 7 A. That's correct.

15:15:59 8 Q. And then that paragraph, "Second," down there, he talks
15:16:03 9 about "After meeting with Kurt Brown and Michael Wright." Who
15:16:07 10 are Kurt Brown and Michael Wright?

15:16:09 11 A. They are also district commanders.

15:16:12 12 Q. And he said he "passed along the documents that they
15:16:14 13 shared with Ernie." That would be Ernie Rodriguez, correct?

15:16:18 14 A. That's correct.

15:16:19 15 Q. And "I to City Legal." If you know, what documents were
15:16:24 16 passed to Mr. Herrington?

15:16:26 17 A. At that point it was, I believe, the same document we
15:16:29 18 produced before for Mr. Herrington, the 2004 FLSA ruling
15:16:35 19 regarding first responders and their status.

15:16:39 20 Q. Now, I want to direct your attention, if I could, to
15:16:45 21 Plaintiffs' Exhibit 36. This purports to be a memorandum to
15:17:00 22 district commanders from Richard Herrington. Do you recognize
15:17:03 23 it?

15:17:03 24 A. Yes, I do.

15:17:04 25 Q. Could you describe it?

15:17:05 1 A. It's a memo from the director, Richard Herrington, to all
15:17:09 2 the ATC EMS district commanders regarding our job duties, yes.

15:17:12 3 Q. And it is dated when?

15:17:13 4 A. January 26th, 2007.

15:17:16 5 Q. And it's directed to district commanders. Did you receive
15:17:21 6 a copy?

15:17:21 7 A. Yes, I did.

15:17:22 8 Q. Does this appear to be a true and correct copy?

15:17:25 9 A. Yes, it is.

15:17:26 10 MR. DEATS: I ask that this be admitted as
15:17:28 11 Plaintiffs' Exhibit 36.

15:17:29 12 MR. COPPOLA: I have no objection to this exhibit
15:17:31 13 being admitted for the good faith issue. Again, I don't think
15:17:35 14 it's relevant to the issues the jury has to decide.

15:17:38 15 THE COURT: Well, we've jumped back again from 2009
15:17:41 16 and to 2007, Mr. Deats. What's the relevance in this
15:17:45 17 particular exhibit?

15:17:45 18 MR. DEATS: Your Honor, the City has in fact offered
15:17:47 19 into evidence an Exhibit 40 that is 2007 letter drafted by
15:17:51 20 Ms. Dulaney Smith. This is pertinent to that letter, and it's
15:17:56 21 pertinent to the case that they are putting on in their case in
15:18:00 22 chief. And it goes both to the good faith issue, obviously,
15:18:04 23 and also goes to the issue of the position that the City has
15:18:07 24 taken over the years.

15:18:11 25 THE COURT: How does that assist the jury in

15:18:14 1 determining that any relevant fact in this case is more likely
15:18:21 2 or less likely to be true?

15:18:24 3 MR. DEATS: Your Honor, I think it's very important
15:18:26 4 for the jury to understand the genesis of the testimony -- the
15:18:30 5 testimony and the documents that have been produced in
15:18:34 6 discovery by Ms. Dulaney Smith and the things that she was
15:18:38 7 hired to do and whether or not she did them. It goes clearly
15:18:41 8 to the issue of good faith, and it also goes to the issue of
15:18:45 9 the credibility of her testimony in making certain conclusions.

15:18:49 10 THE COURT: But she hasn't given any testimony yet,
15:18:52 11 and I'm not going to allow her to be impeached until she gives
15:18:57 12 testimony. So I'm going to sustain the objection at this time,
15:19:00 13 but you may offer it again in rebuttal or you may question
15:19:05 14 about it once I have the testimony of Ms. Smith in the record.

15:19:09 15 MR. DEATS: Very good, Your Honor.

15:19:15 16 But I don't think that they objected to it for the
15:19:17 17 good faith purpose. And so if it is admitted for that limited
15:19:20 18 purposes, may I publish it to the jury?

15:19:22 19 MR. COPPOLA: Your Honor, I mean, once again, I don't
15:19:25 20 understand what the relevance of it is in terms of being
15:19:28 21 published to the jury. It doesn't inform the jury one way --
15:19:31 22 genesis --

15:19:32 23 THE COURT: I sustain the objection. We're getting
15:19:40 24 the cart before the horse here. You need to establish what
15:19:43 25 you're going to establish, Mr. Deats, and then we'll have the

15:19:45 1 City put on their case and you can come back and rebut.

15:19:48 2 MR. DEATS: Very good, Your Honor.

15:19:50 3 Q. (BY MR. DEATS) Okay. I want to direct your attention, if

15:20:08 4 I can, to Plaintiffs' Exhibit 37 and ask you to look at that

15:20:15 5 document and tell me if you recognize it.

15:20:19 6 A. Yes, I do.

15:20:21 7 Q. Could you describe it for me, please.

15:20:23 8 A. It's a memorandum from then-Acting Director

15:20:28 9 Ernie Rodriguez to all the district commander personnel

15:20:31 10 regarding pay conversion for nonexempt status.

15:20:34 11 Q. It's stated 12/10/2007?

15:20:37 12 A. That's correct.

15:20:38 13 Q. After this dispute had started and you had retained an

15:20:41 14 attorney?

15:20:41 15 A. That's correct.

15:20:42 16 MR. DEATS: Your Honor, I ask that this be admitted

15:20:44 17 as Plaintiffs' Exhibit 37.

15:20:46 18 MR. COPPOLA: Your Honor, I have the same objections

15:20:50 19 I've had to the other exhibits. It's not relevant to the

15:20:52 20 issues in front of the jury. It's relevant only, if anything,

15:20:56 21 to good faith.

15:20:58 22 THE COURT: Again, Mr. Deats, we seem to be taking a

15:21:04 23 long time getting to the policy that is objected to by the

15:21:12 24 plaintiffs and how the plaintiffs are not in fact supervisory

15:21:17 25 personnel. I still have a hard time in understanding why

15:21:28 1 previous discussions or negotiations shed any light on the
15:21:35 2 issue of what the City is doing now and has during the relevant
15:21:41 3 dates in this case compared to what federal law requires the
15:21:46 4 City to do.

15:21:47 5 MR. DEATS: Your Honor, again, it also goes to the
15:21:50 6 good faith issue that is before the Court. It clearly is
15:21:53 7 relevant to that. And this is an indication of a position
15:21:57 8 being taken by the City itself.

15:21:59 9 THE COURT: But good faith is an issue for the Court
15:22:01 10 to decide.

15:22:02 11 MR. DEATS: That's correct, Your Honor. And it was
15:22:04 12 not my understanding that the Court was going to have us put --
15:22:08 13 provide testimony with regards to good faith separate and apart
15:22:12 14 from this trial itself. Where we're also trying to the jury
15:22:16 15 the issue of the status.

15:22:17 16 THE COURT: Well, but I have to be careful in the
15:22:20 17 offering of exhibits as to whether or not they may be
15:22:25 18 misconstrued for issues other than what this Court will
15:22:29 19 determine. That does not mean over the course of this trial
15:22:39 20 these exhibits will all not come into evidence. But some of
15:22:42 21 them come into evidence for the Court to review and some of
15:22:45 22 them will come into evidence for the jury to review. And the
15:22:48 23 jury will make their decision on the fact issues that are in
15:22:50 24 the province of the jury and the Court will make its decision
15:22:55 25 on the issues that are in the province of the Court.

15:22:56 1 MR. DEATS: That's correct, Your Honor. But, of
15:22:58 2 course, I feel that it's my duty to put on my evidence
15:23:01 3 regarding the good faith issue during our case in chief and not
15:23:05 4 simply wait until rebuttal and provide that evidence at that
15:23:08 5 time, you know, in rebuttal to whatever good faith evidence
15:23:12 6 they may put on. And for that reason I feel like it is an
15:23:16 7 appropriate subject of inquiry.

15:23:18 8 THE COURT: I will sustain the objection at this
15:23:20 9 time.

15:23:20 10 MR. DEATS: Very good, Your Honor.

15:23:30 11 Q. (BY MR. DEATS) Okay. If I could, I'd like to turn your
15:23:36 12 attention to Plaintiffs' Exhibit 4. Do you recognize this
15:23:53 13 document?

15:23:54 14 A. Yes, I do.

15:23:54 15 Q. And could you describe it, please.

15:24:06 16 A. Yes. It's a memo from then-Director Ernie Rodriguez to
15:24:12 17 all EMS personnel announcing departmental reorganization.

15:24:16 18 Q. And I want to direct your attention to page 2 of the
15:24:19 19 exhibit. And I'm looking at the paragraph "Five Key Functions
15:24:26 20 of a Commander Operations Supervisor." This is where they talk
15:24:38 21 about changing out the old job description for a new job
15:24:42 22 description. Correct?

15:24:43 23 A. That's correct.

15:24:44 24 Q. And they indicate that the old 13-page job description was
15:24:52 25 replaced with a new job description, focusing on five key

15:24:55 1 functions.

15:24:56 2 A. That's correct.

15:24:56 3 Q. And then he goes on to name those key functions, correct?

15:25:00 4 A. That's correct.

15:25:00 5 Q. And do you see anything in there about delivery of patient

15:25:04 6 care?

15:25:06 7 A. Not specifically, no.

15:25:07 8 Q. There is something about filling ICS command roles as

15:25:11 9 needed, correct?

15:25:12 10 A. Yes.

15:25:12 11 Q. ICS refers to what, if you know?

15:25:14 12 A. Refers to incident command structure or incident command

15:25:18 13 system.

15:25:19 14 Q. But it leaves out any real mention of providing direct

15:25:24 15 patient care, doesn't it?

15:25:25 16 A. That's correct.

15:25:26 17 Q. And, if you know, did you continue to provide direct

15:25:29 18 patient care?

15:25:30 19 A. Yes, I have.

15:25:30 20 Q. Did you continue to respond -- excuse me -- to respond to

15:25:34 21 incidents as you had in the past?

15:25:36 22 A. Yes, I did.

15:25:37 23 Q. Did anything about your actual job change at this time?

15:25:40 24 A. No, it did not.

15:25:41 25 Q. If I could direct your attention to Plaintiffs'

15:25:49 1 Exhibit 7. Now, this is a document that relates to the
15:26:03 2 functional job expectations that we just covered in the last
15:26:06 3 exhibit, right?
15:26:07 4 A. That's correct.
15:26:08 5 Q. And I want to direct your attention specifically to item
15:26:11 6 number three down the middle half of the page. This is the one
15:26:20 7 that talks about incident response and performance evaluation
15:26:24 8 feedback, correct?
15:26:25 9 A. That's correct.
15:26:26 10 Q. And it indicates that you'll function as the front-line
15:26:31 11 resource for personnel?
15:26:33 12 A. Yes.
15:26:33 13 Q. And it goes on to describe some things. But it definitely
15:26:37 14 mentions incident response, does it not?
15:26:39 15 A. Yes, it does.
15:26:40 16 Q. And then if we look back at Plaintiffs' Exhibit 6, this is
15:26:57 17 a slightly later version of that same operations supervisor job
15:27:02 18 expectations, correct?
15:27:03 19 A. Yes, it is.
15:27:04 20 Q. And looking at that same item number three, it changed it
15:27:08 21 slightly, did it not?
15:27:09 22 A. Yes, it did.
15:27:10 23 Q. How did it change it?
15:27:12 24 A. It doesn't mention the specifics to incident response
15:27:16 25 roles any longer.

15:27:17 1 Q. Well, whereas the last exhibit said "incident response and
15:27:21 2 performance evaluation feedback," what does this one say?

15:27:25 3 A. This one says "incident response to provide performance
15:27:29 4 evaluation feedback."

15:27:30 5 Q. So they made a subtle change there. It says incident
15:27:34 6 response for a specific purpose, correct?

15:27:36 7 A. Yes.

15:27:36 8 Q. Did you continue to be part of the dispatch matrix?

15:27:39 9 A. Yes, I did.

15:27:41 10 Q. Did you continue to be an available resource for response
15:27:45 11 to emergency calls?

15:27:46 12 A. Yes, I did.

15:27:58 13 THE COURT: Ladies and gentlemen, I think this is as
15:28:00 14 good a time as any to take our afternoon recess. We'll be in
15:28:04 15 recess for 15 minutes.

15:28:36 16 (Open Court, no jury)

15:28:36 17 THE COURT: Let the record reflect that the jury is
15:28:38 18 out of the room. Mr. Deats, I'm not suggesting to you that you
15:28:41 19 wait until your rebuttal to put on your good faith exhibits.
15:28:44 20 It's just that they're not appropriate to go to the jury, since
15:28:47 21 I will make the decision on good faith.

15:28:51 22 According to what I have in front of me and the
15:28:53 23 plaintiff has, Exhibits 33 through 37 that go to good faith and
15:28:59 24 defendant has Exhibits 37 through 46 that go to good faith.
15:29:04 25 They can be offered at any time on the good faith issue.

15:29:07 1 They're just not to be offered to the jury or considered by the
15:29:10 2 jury unless they're relevant to some other issue.

15:29:14 3 MR. DEATS: Your Honor, I think they are relevant to
15:29:16 4 another issue. I mean, they're not offering -- they're not
15:29:19 5 offering Defense 40 just as evidence of their good faith. In
15:29:23 6 fact, in a report that she wrote in March of 2012, Ms. Dulaney
15:29:28 7 Smith indicated that a bunch of her report was based on stuff
15:29:34 8 she did back in 2007.

15:29:36 9 THE COURT: Then when that comes in and it's in
15:29:38 10 context, then I will reconsider my rulings for other purposes.
15:29:44 11 It's just that you can't anticipate. You know, you had an
15:29:47 12 opportunity to let the defendant go first. The defendant
15:29:51 13 indicated that the defendant would be happy to go first. It
15:29:55 14 wanted to go first. You resisted that, and I supported your
15:30:02 15 resistance to it. So you don't get it both ways.

15:30:05 16 If you're going first, you've got to put your case on
15:30:09 17 and then let the defendant put on its case. And then you can
15:30:12 18 come back and rebut or you can cross-examine. And it's
15:30:15 19 possible you may be able to offer and get admitted exhibits
15:30:19 20 during cross-examination. But I'm not going to stand by my
15:30:24 21 previous ruling, which was to let you go first, and then let
15:30:28 22 you anticipate their case.

15:30:30 23 The City could change its trial strategy after it
15:30:34 24 hears your case. It may not urge certain defenses or may not
15:30:39 25 put on testimony about that. So that's the reason I'm

15:30:43 1 overruling -- I mean, I'm sustaining the objections at this
15:30:46 2 time. It does not put you out of the hunt.

15:30:49 3 But if you're going to present your case in chief
15:30:51 4 first, you need to produce your case in chief, and then you can
15:30:54 5 react to the defense of the defendant.

15:30:57 6 MR. DEATS: I understand what you're saying,
15:30:59 7 Your Honor. You know, it's a little bit disconcerting only in
15:31:03 8 the sense that I'm not sure if the Court is expecting me to put
15:31:07 9 on testimony outside the presence of the jury with regard to
15:31:10 10 the good faith issue or if the Court is expecting me to put on
15:31:13 11 this evidence in rebuttal or to wait and put on my good faith
15:31:19 12 evidence in rebuttal.

15:31:20 13 THE COURT: You have to put it on sometime. You
15:31:25 14 might not need to do it during the trial. I'll leave that up
15:31:28 15 to you. We're going to submit certain issues to the jury, and
15:31:32 16 we're going to get a jury verdict. And then we're going to see
15:31:35 17 what's left in this case and what the Court has to determine.
15:31:40 18 We know, if the verdict supports damages, we're going to have a
15:31:46 19 bench trial on the damages because we previously agreed on
15:31:51 20 that.

15:31:51 21 It's possible -- and you-all may discuss this, what
15:31:55 22 you think is the best way to proceed -- that we put on all but
15:31:59 23 good faith and get the jury verdict and then put on the good
15:32:02 24 faith and damages because that's a defensive issue.

15:32:05 25 If the Court's going to take up the defensive issue,

15:32:10 1 that's only relevant after we see what the jury is going to do
15:32:17 2 with regard to the other. But if it's an issue that the Court
15:32:21 3 is going to take up, you don't need to put it on in front of
15:32:24 4 the jury.

15:32:26 5 MR. DEATS: Okay, Your Honor. Maybe we do need --
15:32:30 6 maybe the parties do need to visit about this whole good faith
15:32:33 7 matter. I just don't want to be put in the position where I'm
15:32:36 8 not sure exactly when and how I'm supposed to get it on.

15:32:40 9 THE COURT: I am not going to put you in that
15:32:42 10 position. But don't -- you also don't need to guess. If I'm
15:32:45 11 not going to submit an issue and question to the jury on good
15:32:51 12 faith, then the jury doesn't need evidence of good faith. It
15:32:55 13 seems to me -- and I'm not locked into this -- that we put the
15:33:02 14 questions to the jury that go to the jury and then we determine
15:33:05 15 what we have left. The trial is not over when we get a jury
15:33:09 16 verdict. The good faith issue largely goes to, if the City
15:33:15 17 prevails on it, damages anyway. So if the jury were to decide
15:33:22 18 that the City had no liability on anything, then that's all
15:33:28 19 moot.

15:33:28 20 So y'all work out how best to get this in. I'm not
15:33:32 21 going to talk anybody out of their record. I'm going to let
15:33:35 22 you make whatever record you need to make, but we need to make
15:33:38 23 it in the appropriate sequence as to what should be put on
15:33:41 24 before the jury and what should be put on before the Court.

15:33:44 25 We've got a long way to go with this case right now,

15:33:48 1 so y'all have plenty of time to work out these things. But
15:33:52 2 work out what's easiest for both of you and the Court that gets
15:33:55 3 your record made the way it needs to be made.

15:33:58 4 MR. DEATS: Very good, Your Honor.

15:33:58 5 THE COURT: Court's in recess.

15:34:00 6 (Recess)

15:46:50 7 THE COURT: Mr. Deats, you may continue your direct
15:46:52 8 examination of Mr. Fitzpatrick.

15:46:54 9 MR. DEATS: Thank you, Your Honor.

15:46:58 10 Q. (BY MR. DEATS) Mr. Fitzpatrick, I believe when we left we
15:47:00 11 were talking about Plaintiffs' Exhibit 5. And this is the new
15:47:19 12 one-page job description that came out in July of 2008, is it
15:47:24 13 not.

15:47:24 14 A. That's correct.

15:47:25 15 Q. Okay. And if we could show that to the jury.

15:47:28 16 And I'm looking under "Duties, Functions, and
15:47:30 17 Responsibilities," item number four. It does talk about
15:47:39 18 responding to emergencies, doesn't it?

15:47:41 19 A. Yes, it does.

15:47:42 20 Q. But it doesn't really talk about -- except for
15:47:46 21 coordinating and directing the activities of personnel, do you
15:47:50 22 see anywhere where it talks about actually providing patient
15:47:55 23 care?

15:47:55 24 A. No, it does not.

15:47:56 25 Q. In your opinion and based on your experience in the field,

15:47:56 1 does this accurately represent the job that you're doing?

15:47:58 2 A. No, it does not.

15:47:59 3 Q. In what way does it not?

15:48:00 4 A. It completely omits the fact that we provide front-line

15:48:04 5 medical care to the sick and injured.

15:48:06 6 Q. Okay. And then if we could look at Plaintiffs'

15:48:08 7 Exhibit 8. This is another job description that took effect in

15:48:18 8 December of 2009?

15:48:20 9 A. That's correct.

15:48:21 10 Q. And looking at item four under "Duties, Functions, and

15:48:24 11 Responsibilities," did the language of that change in any

15:48:27 12 meaningful way?

15:48:28 13 A. No, it did not.

15:48:31 14 Q. Did your job change in any way after the issuance of this

15:48:36 15 new job description?

15:48:37 16 A. No, it did not.

15:48:38 17 Q. You continued to provide patient care?

15:48:41 18 A. Yes, I did.

15:48:42 19 Q. And I ask you to look at Plaintiffs' Exhibit 9. Yet

15:48:48 20 another job description issued in 2011. Again, looking at item

15:48:52 21 four under "Duties, Functions, and Responsibilities," it

15:48:57 22 continues to have the same language?

15:49:00 23 A. Yes, it does.

15:49:01 24 Q. But has your job changed?

15:49:03 25 A. No, it has not.

15:49:04 1 Q. You've continued to provide direct patient care?

15:49:06 2 A. Yes.

15:49:07 3 Q. Let's talk a moment -- let's break away from that, and

15:49:17 4 let's talk about the supervisory duties of a commander. You

15:49:21 5 admit that you supervise a group of paramedics, don't you?

15:49:25 6 A. Yes, I do.

15:49:26 7 Q. And like what sort of group of paramedics are you assigned

15:49:30 8 to supervise?

15:49:30 9 A. In my district, which is district six, I supervise one

15:49:33 10 ambulance which has rescue paramedics and six other ambulances

15:49:38 11 that have field providers on them.

15:49:40 12 Q. And I guess during the time that you're actually on duty

15:49:46 13 on a shift, you supervise the paramedics in that district, do

15:49:49 14 you not?

15:49:50 15 A. That's correct.

15:49:50 16 Q. Now, that's a different group, though, isn't it?

15:49:53 17 A. Yes, it is.

15:49:54 18 Q. Do the paramedics that you supervise for mentoring

15:49:57 19 purposes, do they actually work on the same shift as you?

15:50:01 20 A. Not always.

15:50:01 21 Q. And is that because of the shift bid process?

15:50:04 22 A. That's correct.

15:50:05 23 Q. Now, you mentioned this earlier. But, in your absence,

15:50:08 24 can a -- let's say you have to miss a shift for some reason.

15:50:12 25 Can a captain or a clinical specialist do your job in your

15:50:16 1 place?

15:50:16 2 A. Yes, they can.

15:50:17 3 Q. Are there some things that they don't allow a captain to

15:50:21 4 do, though?

15:50:22 5 A. Yes.

15:50:22 6 Q. Like what?

15:50:23 7 A. They are specifically not allowed to do investigations for

15:50:29 8 employee misconduct. But other than that, the job

15:50:35 9 responsibilities are almost exactly the same.

15:50:38 10 Q. Let's talk about some typical type of management

15:50:41 11 responsibilities. Specifically, let's focus on hiring. What

15:50:46 12 participation do you have in the hiring process, if any?

15:50:48 13 A. I personally don't participate in the hiring process.

15:50:52 14 Q. Okay. Do you know whether or not some field commanders do

15:50:55 15 participate in the hiring process?

15:50:56 16 A. Some do.

15:50:57 17 Q. And so is it required? voluntary? what?

15:51:00 18 A. It's voluntary.

15:51:01 19 Q. And what sort of participation do those who choose to do

15:51:06 20 so make in the hiring process?

15:51:07 21 A. District commanders who choose to participate in the

15:51:10 22 hiring process are part of the panel.

15:51:11 23 Q. And what's the purpose of that panel?

15:51:13 24 A. That panel interviews prospective employees and makes a

15:51:18 25 collective recommendation to our executive leadership of

15:51:26 1 whether that candidate should be hired.

15:51:27 2 Q. And who participates in these panels?

15:51:30 3 A. There are paramedics, there are clinical specialists and
15:51:34 4 district commanders, and representatives from Human Resources.

15:51:37 5 Q. And paramedics and clinical specialists, of course,
15:51:41 6 they're nonexempt employees, right?

15:51:43 7 A. That's correct.

15:51:44 8 Q. And do they -- is their participation required or
15:51:47 9 voluntary? Do you know?

15:51:48 10 A. It's voluntary as well.

15:51:50 11 Q. Do district commanders have any more input into that
15:51:55 12 process than do the paramedics who participate?

15:51:59 13 MR. COPPOLA: Objection. Calls for speculation. The
15:52:00 14 witness has testified he doesn't participate in this process.

15:52:03 15 THE COURT: All right. Sustained at this point. Lay
15:52:05 16 the predicate. And if he has knowledge how that happens, he
15:52:10 17 can testify about it.

15:52:10 18 Q. (BY MR. DEATS) You have participated in the past, have you
15:52:12 19 not?

15:52:12 20 A. In the past, yes.

15:52:13 21 Q. Okay. And during the time that you participated, was
15:52:16 22 the -- was there any difference given to the -- consideration
15:52:19 23 given to a paramedic's recommendation as opposed to a district
15:52:22 24 commander's?

15:52:23 25 A. The district commander's recommendation was taken as part

15:52:27 1 of the panel's recommendation. Everybody had input into it,
15:52:31 2 and a score was amassed. But the whole group agreed upon it.

15:52:38 3 Q. Let's talk about training of employees. How is the
15:52:41 4 training of the medics accomplished?

15:52:44 5 A. Our new employees are sent through an academy of varying
15:52:49 6 length. It's 12 weeks now, I believe. And they're trained by
15:52:53 7 the clinical specialists. They are the ones in charge of
15:52:58 8 training other folks.

15:52:59 9 Q. Okay. And that involves both classroom training and then
15:53:03 10 also some training in the field?

15:53:04 11 A. That's correct. They're also sent out to clinical
15:53:07 12 specialists in the field for field training.

15:53:09 13 Q. And, of course, the clinical specialists are nonexempt
15:53:12 14 employees, right?

15:53:18 15 A. That's correct.

15:53:19 16 Q. Now, do the field commanders, do they have any
15:53:21 17 responsibility in the training academy or in the field training
15:53:25 18 that's conducted by the clinical specialists?

15:53:28 19 A. The field commanders don't necessarily have direct
15:53:31 20 training and responsibilities. We oversee the clinical
15:53:35 21 specialists in their training of the other folks.

15:53:37 22 Q. Okay. Now, do you play any role in setting or adjusting
15:53:45 23 pay rates?

15:53:46 24 A. No, I do not.

15:53:48 25 Q. What about directing the work of employees? Do you direct

15:53:51 1 the work of employees?

15:53:52 2 A. Not specifically. Our paramedics and clinical specialists
15:53:58 3 working on an ambulance, some of them very far removed from me
15:54:03 4 at any given time. They're fairly autonomous.

15:54:07 5 Q. Now, you heard the City testify that the great majority of
15:54:10 6 calls commanders are not on.

15:54:12 7 A. Yes.

15:54:12 8 Q. Now, are you able to supervise the paramedics and the
15:54:16 9 medics in the way they do their work when you're not even
15:54:18 10 there?

15:54:19 11 A. No, I'm not.

15:54:23 12 Q. Now, you do upon occasion make calls with paramedics and
15:54:27 13 captains, don't you?

15:54:28 14 A. Yes, I do.

15:54:29 15 Q. And when you do, do you direct their operations at that
15:54:33 16 time?

15:54:33 17 A. Again, they're fairly autonomous. I don't direct their
15:54:38 18 provision of medical care, no.

15:54:39 19 Q. In fact, it -- what does really guide paramedics in the
15:54:47 20 way they provide medical care, if you know?

15:54:49 21 A. Specifically, we have standing orders or clinical
15:54:52 22 operating guidelines. They're medical policies laid out by our
15:54:57 23 medical director as to how we evaluate sick and injured
15:55:02 24 individuals and then how we treat them.

15:55:03 25 Q. Okay. And if we look at Plaintiffs' Exhibit 20, do you

15:55:15 1 recognize this as one of the clinical operating guidelines for
15:55:18 2 the City of Austin?

15:55:20 3 A. Yes, I do.

15:55:20 4 Q. Specifically with regards to patient care?

15:55:23 5 A. Yes.

15:55:23 6 Q. And I'm looking at item number one under "Application."
15:55:34 7 It talks about, when you have a conflict, who has final
15:55:38 8 authority on scene with regards to delivery of care, right?

15:55:42 9 A. Yes, it does.

15:55:42 10 Q. And then item two lists the seniority credentials.

15:55:46 11 A. Yes, it does.

15:55:47 12 Q. Are district commanders on that list, per se?

15:55:55 13 A. Not specifically by name, no.

15:56:00 14 Q. Okay. I mean, I do see a part where if there's a
15:56:03 15 paramedic first responder, that could be a district commander,
15:56:06 16 couldn't it?

15:56:07 17 A. Yes. It could be.

15:56:08 18 Q. But, basically -- so if -- if there's on-site care being
15:56:12 19 provided to a patient, can the district commander direct that
15:56:15 20 care in any meaningful fashion?

15:56:17 21 A. No, he can cannot.

15:56:19 22 Q. Now, what about maintaining records for supervision or
15:56:23 23 control? I'm told there is something called the record
15:56:26 24 management system. Are you familiar with that system?

15:56:28 25 A. Yes, I am. RMS.

15:56:30 1 Q. Okay. And what is RMS?

15:56:32 2 A. RMS is an electronic note-keeping system or a

15:56:36 3 recordkeeping system whereby I can write down or store

15:56:41 4 interactions that I have with employees, conversations that I

15:56:44 5 have, concerns that I have as I go about the day.

15:56:52 6 Q. And these records are maintained on an automated system,

15:56:57 7 are they not?

15:56:57 8 A. Yes, they are.

15:56:59 9 Q. Now, give me another example of a situation in which you

15:57:07 10 might make an entry into the RMS system for an employee.

15:57:11 11 A. If I have an employee who is late for work, for example, I

15:57:15 12 may have a conversation with that employee and explain -- make

15:57:17 13 them aware of the policy about their tardiness and then

15:57:20 14 document that to RMS. There's also disciplinary records that

15:57:24 15 wind up in RMS as well.

15:57:25 16 Q. Now, are district commanders the only person who make

15:57:33 17 entries into the system?

15:57:35 18 A. No, they are not.

15:57:35 19 Q. Who are other persons who can make performance or employee

15:57:38 20 performance entries into the system?

15:57:39 21 A. Clinical specialists can regarding new candidates, and

15:57:42 22 anyone above my rank can.

15:57:47 23 Q. And do you know whether or not clinical specialists are

15:57:50 24 required, in fact, to make entries into the RMS system?

15:57:54 25 A. Yes, they are.

15:57:55 1 Q. Let's talk about the amount of time that you spend making
15:57:58 2 entries into the RMS system. How much of your day, on average,
15:58:02 3 would you say that takes?
15:58:03 4 A. On an average day?
15:58:04 5 Q. Yes, sir.
15:58:05 6 A. Thirty to 45 minutes. Less than an hour.
15:58:09 7 Q. Okay. And what about disciplining employees? Do you play
15:58:13 8 any role in disciplining employees?
15:58:14 9 A. Yes.
15:58:15 10 Q. And what sort of role do you play?
15:58:16 11 A. As far as employee discipline goes, the district
15:58:20 12 commanders are responsible for doing the initial investigation,
15:58:23 13 either by report or by observation. And from there we make a
15:58:28 14 recommendation based on employee history looking at RMS about
15:58:33 15 what sort of discipline might be appropriate, I make that
15:58:36 16 recommendation to my division chief, and then it gets approved
15:58:40 17 from there.
15:58:41 18 Q. Okay. And what's your experience with regards to your
15:58:44 19 recommendations? Are they always followed?
15:58:46 20 A. Not always.
15:58:46 21 Q. Can you yourself decide on discipline?
15:58:49 22 A. Not unilaterally.
15:58:50 23 Q. If you wanted to do something like a reprimand, can you
15:58:54 24 decide on your own to reprimand an employee?
15:58:56 25 A. Not something of that severity, no.

15:58:58 1 Q. These disciplinary investigations events, do they take
15:59:04 2 much of your time?
15:59:05 3 A. No, they do not.
15:59:07 4 Q. On average would you say it's a large percentage? small
15:59:13 5 percentage? what?
15:59:13 6 A. A small percentage. I don't spend much time each month
15:59:17 7 doing that. Fortunately, disciplinary investigations are a
15:59:20 8 small portion of what I have to do daily.
15:59:23 9 Q. Responding to employee complaints, do you have any role in
15:59:26 10 that?
15:59:26 11 A. Yes.
15:59:26 12 Q. And what's that role?
15:59:27 13 A. Again, we do the initial intake of employee complaints.
15:59:30 14 If it's something as simple as clarifying a policy, I can show
15:59:34 15 the employee the policy and have a discussion with them about
15:59:37 16 that. If it's not to the employee's satisfaction, it goes up
15:59:41 17 to my next level supervisor.
15:59:44 18 Q. Do you have any real role in planning the work of the
15:59:47 19 medics?
15:59:48 20 A. No, I do not.
15:59:50 21 Q. What about the techniques they use during their workday?
15:59:52 22 A. No, I do not.
15:59:53 23 Q. What about apportioning work among employees? Do you have
15:59:57 24 any role in that?
15:59:58 25 A. No, I do not.

15:59:59 1 Q. Determining the materials, supplies, and equipment that
16:00:03 2 they're going to use, do you have any role in that regard?
16:00:06 3 A. Not in determining that, no.
16:00:07 4 Q. In fact, are there things that govern the types of
16:00:10 5 supplies and things that you -- that the medics use?
16:00:13 6 A. Yes, there are.
16:00:14 7 Q. If I could direct your attention to Plaintiffs'
16:00:16 8 Exhibit 19, do you recognize this clinical operating guideline?
16:00:25 9 A. Yes, I do.
16:00:26 10 Q. And what -- what is it?
16:00:27 11 A. It's a clinical operating guideline that establishes the
16:00:31 12 minimum amount of equipment that should be brought to a
16:00:35 13 patient's side.
16:00:36 14 Q. And so when you're looking to see whether a truck -- a
16:00:41 15 truck is properly equipped or something like that, is this
16:00:45 16 where you go?
16:00:45 17 A. Yes.
16:00:46 18 Q. Do you have authority to deviate from what's required
16:00:49 19 here?
16:00:49 20 A. No, I do not.
16:00:50 21 Q. Look at Plaintiffs' Exhibit 21, do you recognize this as a
16:00:56 22 Travis County EMS system policy?
16:01:00 23 A. Yes, it is.
16:01:00 24 Q. And what is this regarding?
16:01:02 25 A. It's, again, the guiding principle regarding what medical

16:01:07 1 equipment should be brought to a patient's side, specifically
16:01:11 2 in this case for intermediate life support and advanced life
16:01:16 3 support, ILS and ALS.

16:01:19 4 Q. And so the equipment and supplies that the paramedics use,
16:01:23 5 then, it's pretty much governed by these policies?

16:01:27 6 A. That's correct.

16:01:28 7 Q. Now, do you feel like you have any authority in terms of
16:01:32 8 planning and controlling the budget?

16:01:34 9 A. No, I do not.

16:01:35 10 Q. What about monitoring compliance measures? You do keep
16:01:42 11 track of things like slow response times, don't you?

16:01:45 12 A. Yes, I do.

16:01:46 13 Q. And can you take some action if you see somebody that
16:01:51 14 has -- when we talk about slow response time, that's time
16:01:54 15 getting out the chute right, getting to an incident?

16:01:57 16 A. That's out-of-chute time, yes.

16:01:59 17 Q. If you have slow out-of-chute time, can you do something
16:02:02 18 about it?

16:02:02 19 A. I contact the employee and notify them of out-of-chute
16:02:06 20 time and see if there were extenuating circumstances -- someone
16:02:09 21 in the bathroom or something like that, which happens. I then
16:02:12 22 make a report to my chief if they are ones that are outside and
16:02:17 23 don't have a reasonable explanation.

16:02:19 24 Q. And, again, does that take any significant portion of your
16:02:21 25 time?

16:02:22 1 A. Very small portion.

16:02:23 2 Q. And, finally, evaluations, promotions. Now, in the past,

16:02:29 3 commanders used to do some kind of evaluation called an SSPR,

16:02:33 4 didn't they?

16:02:33 5 A. That's correct.

16:02:34 6 Q. And what's an SSPR?

16:02:36 7 A. An SSPR is the City's Success Strategy Performance

16:02:41 8 Review. It's a personnel evaluation.

16:02:43 9 Q. Okay. And do you -- since 2007 have you done those types

16:02:47 10 of reviews?

16:02:48 11 A. Not formally, no.

16:02:49 12 Q. Okay. Do you do any type of review of employees?

16:02:52 13 A. Very informal, yes.

16:02:53 14 Q. Is it something that you're required to do?

16:02:55 15 A. Something I should do, yes.

16:02:58 16 Q. Okay. And does that take much of your time?

16:03:00 17 A. Not very much at all, no.

16:03:03 18 Q. Now, what about promotions? I heard something in the

16:03:06 19 City's opening about a role that you play in a promotion.

16:03:09 20 What's your understanding of the role you play with regards to

16:03:12 21 promotions in this system?

16:03:13 22 A. Commanders write not necessarily performance evaluations,

16:03:20 23 but a recommendation. It's a standard format form that is sent

16:03:26 24 to each one of us if we have -- if we're told we have employees

16:03:30 25 that are eligible for promotion and we're familiar with this

16:03:33 1 employee, to go ahead and fill out one of these forms and
16:03:36 2 submit it on their behalf.

16:03:39 3 Q. You know, we've talked about several categories here.
16:03:43 4 We've talked about making entries into RMS, doing disciplinary
16:03:47 5 investigations, sometimes making promotion recommendations. I
16:03:51 6 think you said a few people are on hiring committees. That
16:03:54 7 type of office work, does that take a significant portion of
16:03:57 8 your day?

16:03:58 9 A. No, it does not.

16:03:59 10 Q. On average, of these types of duties that we've talked
16:04:03 11 about, how much of your day would you say is spent doing those
16:04:06 12 sorts of things?

16:04:07 13 A. Combined in the 24-hour period, somewhere probably around
16:04:12 14 two, maybe three hours.

16:04:14 15 Q. So in a typical 24-hour shift -- that's a 24-hour period,
16:04:19 16 right?

16:04:19 17 A. Yes.

16:04:19 18 Q. So you'll spend, you think, two to three hours performing
16:04:23 19 these types of tasks that we've been talking about?

16:04:25 20 A. Sometimes. Sometimes it's a little bit more; sometimes
16:04:29 21 it's a little bit less.

16:04:30 22 Q. I mean, obviously, it changes from day to day, right?

16:04:33 23 A. Certainly.

16:04:34 24 Q. And when you're doing these office tasks, if you get
16:04:37 25 dispatched to a call, what, if anything, are you supposed to do

16:04:39 1 in that situation?

16:04:40 2 A. I have a duty to respond in that situation. I'm supposed

16:04:43 3 to stop what I'm doing and go on the call.

16:04:46 4 Q. Does that happen very frequently?

16:04:47 5 A. Daily.

16:04:50 6 Q. Where does most of your supervision of employees actually

16:04:54 7 take place?

16:04:55 8 A. Most of my supervision of employees takes place while I am

16:05:01 9 basically out in my district with my employees on calls.

16:05:05 10 Q. And do you -- I mean, you have a command vehicle, right?

16:05:10 11 A. Yes, I do.

16:05:10 12 Q. Okay. Do you use that command vehicle a lot?

16:05:13 13 A. Yes, I do.

16:05:14 14 Q. Okay. Now, you were here in the courtroom, and you heard

16:05:20 15 the City's opening statement read to the jury panel by the

16:05:24 16 Court, did you not?

16:05:25 17 A. Yes, I did.

16:05:26 18 Q. And you -- so you heard them say that commanders, quote,

16:05:29 19 provide direct patient care only rarely, close quote.

16:05:33 20 Did you hear that statement?

16:05:34 21 A. I heard that.

16:05:35 22 Q. What's your experience? Does that accord with your

16:05:38 23 experience?

16:05:39 24 A. No, it does not.

16:05:40 25 Q. In what way does that not accord with your experience?

16:05:43 1 A. I provide patient care daily as a supervisor. It's what
16:05:49 2 EMS does. It's what we do.

16:05:51 3 Q. Does a field commander -- during what portion of your
16:05:55 4 24-hour shift is a field commander on call to respond to
16:05:59 5 medical emergencies?

16:06:00 6 A. We're on call for the duration of our shift, from the time
16:06:03 7 we take over the truck from the off-going person until the time
16:06:08 8 we're relieved of duty.

16:06:09 9 Q. Is there any duty you consider more important than that
16:06:12 10 duty?

16:06:12 11 A. No.

16:06:13 12 Q. Now, you talked a moment ago about the fact that you're
16:06:18 13 part of the dispatch matrix. And are you actually considered a
16:06:24 14 resource available to go to these calls?

16:06:26 15 A. Yes, I am.

16:06:27 16 Q. And, in fact, sometimes are you dispatched?

16:06:31 17 A. Yes, I am.

16:06:32 18 Q. When you're dispatched, do you have a choice about whether
16:06:35 19 or not to go on the call?

16:06:36 20 A. No, I do not.

16:06:37 21 Q. What's your obligation when you receive a dispatch?

16:06:40 22 A. My obligation is to, in the most timely manner safely
16:06:43 23 manner possible, get to my apparatus and go respond to the
16:06:47 24 medical incident just like an ambulance would.

16:06:50 25 Q. Now, of course, you're not dispatched to all of the calls,

16:06:53 1 are you?

16:06:54 2 A. No, I'm not.

16:06:54 3 Q. And when I say "you," I'm talking about the field

16:06:57 4 commanders, right?

16:06:59 5 A. No, we're not.

16:06:59 6 Q. But there are a number of types of calls that you are

16:07:03 7 dispatched to, aren't there?

16:07:04 8 A. Yes, there are.

16:07:05 9 Q. I want to direct your attention to Plaintiffs' Exhibit 12.

16:07:25 10 While we're working on rotating that, if you look at the one in

16:07:29 11 your volume, do you recognize what this is?

16:07:32 12 A. Yes, I do.

16:07:33 13 Q. Okay. We're rotated now.

16:07:35 14 This is something entitled an Urban Response Plan.

16:07:38 15 Can you tell me what's your understanding of what this document

16:07:41 16 represents.

16:07:42 17 A. Yes. This basically is the way in which all units that

16:07:46 18 are recognized by our computer-aided dispatch system, our CAD

16:07:51 19 system, are sent on any and all calls.

16:07:53 20 Q. And when you talk about these response -- or these

16:07:57 21 resources that are sent, you're talking basically about two

16:08:02 22 type of vehicles, aren't you?

16:08:04 23 A. Yes.

16:08:04 24 Q. I mean, there's the -- I mean, there are some other

16:08:08 25 vehicles. You've got a helicopter, don't you? Or somebody's

16:08:11 1 got a helicopter?

16:08:13 2 A. Somebody has a helicopter. Yes, sir.

16:08:16 3 Q. It's just not you guys. Well, let's look at this thing.

16:08:20 4 I see that at the top of the page we have medical priority one

16:08:23 5 to five. Do you see that?

16:08:24 6 A. Yes, sir.

16:08:25 7 Q. Now, does dispatch use a priority system in terms of the

16:08:30 8 severity of calls?

16:08:32 9 A. Yes.

16:08:32 10 Q. And how does that work?

16:08:33 11 A. There's a standardized nation-wide recognized system

16:08:37 12 called MPD, or Medical Priority Dispatch. And the way that

16:08:41 13 works is, based on the information we get from 9-1-1 callers,

16:08:44 14 the call is triaged by the call taker, "one" being the most

16:08:48 15 severe call and "five" being the least severe. It's

16:08:52 16 significant because, as you get higher up in the medical

16:08:55 17 priorities, ambulances might be diverted from a priority four

16:09:00 18 call, which might be a sprained ankle, to a priority two call

16:09:04 19 which is somebody having a heart attack. It allows us to send

16:09:08 20 the most appropriate resource in the most timely manner to the

16:09:11 21 patient's side.

16:09:11 22 Q. Okay. And if we look at medical priority one, it talks

16:09:16 23 about the closest medic unit. Is that a term used to refer to

16:09:19 24 an ambulance?

16:09:20 25 A. Yes. That's an ambulance.

16:09:22 1 Q. Okay. And then it also says, "Respond with ALS resource
16:09:26 2 if there can be 30-second time savings."

16:09:30 3 Now, what does "ALS resource" mean in that?

16:09:32 4 A. An ALS resource would mean an ALS certified or Advanced
16:09:36 5 Life Support certified responder in the system.

16:09:37 6 Q. Is a command truck considered an ALS resource?

16:09:41 7 A. Yes, it is.

16:09:42 8 Q. So are you automatically dispatched to some type of
16:09:46 9 priority one calls?

16:09:47 10 A. Yes, I am.

16:09:48 11 Q. Those are considered the most severe calls in the system?

16:09:51 12 A. That's correct.

16:09:52 13 Q. What about priority two? Same thing there, just a
16:09:54 14 different time savings?

16:09:56 15 A. That's correct.

16:09:56 16 Q. Are you sometimes dispatched to respond to priority two
16:10:00 17 calls?

16:10:00 18 A. Yes, I am.

16:10:01 19 Q. And then if we look down the page below the five
16:10:06 20 responses, I see a thing called "cardiac arrest." Now, cardiac
16:10:10 21 arrest, I guess that's a term -- even though most of us think
16:10:13 22 we know what that is, what does "cardiac arrest" mean to you in
16:10:17 23 this grid?

16:10:18 24 A. Cardiac arrest is a situation when the 9-1-1 or EMS
16:10:25 25 call-taker determined that the patient is not breathing and

16:10:26 1 their heart is no longer beating. Basically no pulse and no
16:10:31 2 respiration. So they're clinically dead. It's the most severe
16:10:36 3 call that we're dispatched to and the most time critical call.
16:10:38 4 Q. Okay. And I'm looking at the response that Austin-Travis
16:10:41 5 County EMS sends. I notice that they send the closest medic
16:10:44 6 unit, and they also send the closest commander; is that
16:10:47 7 correct?
16:10:47 8 A. That's correct.
16:10:47 9 Q. So a commander gets dispatched to every cardiac arrest
16:10:52 10 call?
16:10:52 11 A. That's correct.
16:10:53 12 Q. Now, are those common? Are they uncommon? I mean, how
16:10:55 13 often does it happen?
16:10:57 14 A. Daily, multiple times.
16:10:58 15 Q. Have you ever been dispatched to more than one cardiac
16:11:01 16 arrest in one shift?
16:11:03 17 A. Yes, I have.
16:11:03 18 Q. What's the most cardiac arrests you recall ever being
16:11:06 19 dispatched to in a day?
16:11:06 20 A. In a single shift, three.
16:11:10 21 Q. So do you know other commanders who have been dispatched
16:11:13 22 even more than that?
16:11:14 23 A. Some have been dispatched four, possibly five, yes.
16:11:16 24 Q. Okay. If we look down to "vehicle rescue," now, what's a
16:11:23 25 vehicle rescue in this grid?

16:11:25 1 A. A vehicle rescue is a traffic accident that results in a
16:11:29 2 patient who is still entrapped in the vehicle because of either
16:11:33 3 the severity of the damage to the vehicle or the fact that the
16:11:36 4 vehicle is actually impinged on the person themselves and
16:11:40 5 they're actually physically stuck in the car.

16:11:42 6 Q. And I notice that, in addition to the closest medic unit,
16:11:45 7 they will also send the closest commander?

16:11:47 8 A. That's correct.

16:11:48 9 Q. So commanders get sent to all vehicle pin-ins?

16:11:53 10 A. Yes, we do.

16:11:54 11 Q. Then we have priority one and two rescues -- well, and
16:11:57 12 priority three rescues, for that matter.

16:12:00 13 What are priority one and priority two rescues?

16:12:03 14 A. Priority one and priority two rescues, the distinction
16:12:07 15 between them only is the helicopter. But, basically, they are
16:12:12 16 situations where you have an individual who is trapped in flood
16:12:15 17 water, someone who has fallen off Mount Bonnell, someone who is
16:12:20 18 stuck in a confined space, in a hazardous material situation or
16:12:24 19 in a tactical situation where our specialized units --
16:12:28 20 specialized ambulance and command go to their assistance.

16:12:32 21 Q. And I notice that with regards to those, the closest spec
16:12:35 22 ops commander will be sent?

16:12:37 23 A. That's correct.

16:12:38 24 Q. So these are another type of calls in which you guys are
16:12:40 25 automatically dispatched?

16:12:42 1 A. That's correct.

16:12:43 2 Q. And I believe you said that you're a spec ops commander,

16:12:47 3 correct?

16:12:47 4 A. Yes.

16:12:47 5 Q. So you've been dispatched to these calls as well, haven't

16:12:51 6 you?

16:12:51 7 A. Yes, sir.

16:12:51 8 Q. And if we go down, we can look at all of these where

16:12:54 9 you've got, for example, haz medic. What does haz medic

16:12:58 10 represent?

16:12:58 11 A. It's a hazardous materials alarm. Something along the

16:13:03 12 lines of big chlorine leak or something at a manufacturing

16:13:07 13 center where a chemical designed to be kept in a contained

16:13:09 14 space is now leaking out.

16:13:10 15 Q. Could it be a situation where a truck overturns on a

16:13:13 16 roadway and creates a hazardous materials spill?

16:13:17 17 A. Yes.

16:13:17 18 Q. Okay. And then there's something down there, "alert two"

16:13:19 19 and "alert three." What are those?

16:13:21 20 A. Alert two and alert three are aircraft emergencies. The

16:13:27 21 first one, the alert two, is designated for aircraft that are

16:13:32 22 having mechanical difficulties but still able to make it to the

16:13:36 23 airport. And the alert threes are ones that either may make it

16:13:39 24 to the airport but are in imminent danger of having a crash.

16:13:43 25 An alert three would basically be an aircraft crash.

16:13:46 1 Q. And then there's something called "high-rise"?

16:13:48 2 A. Yes.

16:13:48 3 Q. And that's high-rise buildings?

16:13:50 4 A. That's correct.

16:13:51 5 Q. Okay. We're getting more and more of those in Austin?

16:13:54 6 A. Just a few.

16:13:55 7 Q. And all of these are situations in which a commander is

16:13:59 8 going to be dispatched, correct?

16:14:01 9 A. That's correct.

16:14:02 10 Q. It's not -- we're not talking about self-assigned calls

16:14:06 11 here. We're talking about an actual dispatch, right?

16:14:09 12 A. Correct.

16:14:09 13 Q. And do you have any discretion about whether or not to go

16:14:12 14 when that happens?

16:14:13 15 A. No, I do not.

16:14:14 16 Q. And then if we look at Plaintiffs' Exhibit 13, that's the

16:14:27 17 same sort of thing, except it's called a Suburban Response

16:14:30 18 Plan, right?

16:14:30 19 A. That's correct.

16:14:31 20 Q. And that's the areas of the county that are outside the

16:14:35 21 city perhaps?

16:14:36 22 A. That's correct.

16:14:37 23 Q. Okay. And so then we could go down this list and we see

16:14:40 24 the same types of things and we see a lot of situations in

16:14:44 25 which commanders are required to go?

16:14:45 1 A. That's correct.

16:14:46 2 Q. And, again, looking back at Exhibit 12, sometimes you're
16:14:52 3 referred to as commander and sometimes you're just referred to
16:14:56 4 as an ALS resource, correct?

16:14:58 5 A. That's correct.

16:14:59 6 Q. But in both situations when you're dispatched you're
16:15:02 7 required to go?

16:15:03 8 A. That's correct.

16:15:04 9 Q. Now, let's talk about the reasons that you're dispatched.
16:15:10 10 When you're dispatched to a call, what's your understanding of
16:15:13 11 the expectations that are going to be made of you?

16:15:15 12 A. I'm a medical responder. When I'm dispatched to a call,
16:15:19 13 first and foremost, if I arrive first on the scene, it's my job
16:15:23 14 to do what any other first-arriving unit would do. On a large
16:15:28 15 scene, it's to size up the scene and see what it entails. If
16:15:31 16 it's a traffic accident with many vehicles involved with
16:15:35 17 multiple patients, my job is to size it up, make sure the scene
16:15:38 18 is safe for other units to enter, and count how many patients
16:15:41 19 there are and do a quick triage. That's something any
16:15:44 20 paramedic or any ambulance or any firefighter off of a fire
16:15:49 21 truck would do as well.

16:15:50 22 If there is immediate life threats to individuals, my
16:15:54 23 job is to provide immediate medical care to that individual
16:15:56 24 until I'm relieved by someone else. As incidents evolve,
16:16:01 25 larger incidents, I may fall into a role where I kind of

16:16:04 1 oversee the entire scene.

16:16:05 2 Q. Now, I want to direct your attention, if I can, to

16:16:08 3 Plaintiffs' Exhibit 23. This is a document called a "Command

16:16:24 4 Update," correct?

16:16:25 5 A. Yes.

16:16:25 6 Q. And I want you to look, and it's dated January 19th, 2011?

16:16:31 7 A. Yes.

16:16:32 8 Q. And I want you to look at that first paragraph, the first

16:16:34 9 sentence, in fact. It says, "The command response has multiple

16:16:40 10 purposes and functions, to include being a designated resource

16:16:43 11 for the system or being self-assigned to evaluate the

16:16:47 12 performance of your crews."

16:16:49 13 Now, what do you understand that phrase, "designated

16:16:52 14 resource for the system," to mean?

16:16:54 15 A. I'm a response resource for the system.

16:16:56 16 Q. Okay. And when you say a "response resource"?

16:16:59 17 A. I'm a medical response resource for the system.

16:17:02 18 Q. Okay. Now, commanders, you know, does there ever come a

16:17:11 19 point in time when a commander may be moved or repositioned,

16:17:16 20 you know, with an eye towards availability to respond?

16:17:19 21 A. Yes.

16:17:19 22 Q. In what sorts of situations does that happen?

16:17:25 23 A. When our system is getting very busy, which happens

16:17:26 24 more and more frequently, it gets overloaded, our dispatchers

16:17:29 25 in our CAD system make recommendations that the ALS command

16:17:33 1 vehicle be moved to a location that's more advantageous to help
16:17:37 2 provide medical care.

16:17:38 3 Q. And you said that seems to be happening more and more?

16:17:41 4 A. As our call volume increases, yes.

16:17:44 5 Q. Now, let's talk a minute about calls that you're not

16:17:47 6 dispatched to but that you may self-assign to. There are the
16:17:50 7 so-called self-assigned calls, are there not?

16:17:53 8 A. Yes, there are.

16:17:54 9 Q. And what are self-assigned calls?

16:17:56 10 A. The command vehicle has a mobile computer in it, and
16:18:00 11 self-assigned calls are ones where I am not automatically
16:18:04 12 dispatched to by protocol but choose to respond to.

16:18:09 13 Q. And, now, you heard in the opening statement by the City
16:18:13 14 that they say you self-assign so you can observe the
16:18:17 15 performance of your crews, correct?

16:18:19 16 A. I heard that, yes.

16:18:20 17 Q. Is that the only reason you self-assign calls?

16:18:23 18 A. No, it's not.

16:18:24 19 Q. Is that the most typical reason that you self-assign to
16:18:27 20 calls?

16:18:27 21 A. No, it's not.

16:18:28 22 Q. What is the most typical reason that you self-assign to
16:18:31 23 calls?

16:18:32 24 A. When I self-assign to a call, usually it's to provide
16:18:35 25 medical care. I realize I'm either closer to the call than the

16:18:39 1 ambulance is and I can get there or it's going to be a
16:18:41 2 particularly complicated medical call where an extra set of ALS
16:18:46 3 hands and eyes would make a difference, or even to help provide
16:18:49 4 scene safety on large thoroughfares, like highways, where there
16:18:53 5 may be multiple patients and vehicles going by.

16:18:56 6 Q. Now, when you say you go to do something like scene
16:18:59 7 safety, is that something in your mind that's unrelated to
16:19:03 8 patient care?

16:19:03 9 A. No, it's not.

16:19:04 10 Q. Why do you think it's not unrelated?

16:19:07 11 A. It's integral to patient care. As an EMT, one of the
16:19:11 12 first things you're taught is: Is the scene safe? It's the
16:19:15 13 first thing you do as any medical provider, is to make sure you
16:19:18 14 have scene safety before you start providing care. The safety
16:19:21 15 of the citizens and patients and the safety of my providers is
16:19:25 16 paramount.

16:19:25 17 Q. And, of course, there are places where commanders aren't
16:19:30 18 assigned, right? I mean, there are a lot of calls that the
16:19:33 19 commanders don't make, correct?

16:19:34 20 A. That's correct.

16:19:35 21 Q. Is scene safety still important in those situations?

16:19:37 22 A. Yes, it is.

16:19:38 23 Q. Is sizing up the situation, deciding if other resources
16:19:41 24 are needed, is that still important?

16:19:43 25 A. Yes, it is.

16:19:43 1 Q. Can other personnel besides commanders do that sort of
16:19:48 2 stuff?

16:19:48 3 A. Yes.

16:19:48 4 Q. Now, what about a type of self-assigned call that we'll
16:19:57 5 refer to as the "stealth call"? Are you familiar with that
16:20:00 6 term?

16:20:01 7 A. Stealth call, yes.

16:20:02 8 Q. What are stealth calls?

16:20:04 9 A. Stealth calls are always where I choose to go but don't
16:20:08 10 actually, via the computer system, assign myself.

16:20:13 11 Q. And why would you go on a stealth call?

16:20:15 12 A. When I am in my vehicle and I use my computer to
16:20:18 13 self-assign and I hit the button, it attaches me automatically
16:20:22 14 to that call. It also notifies my responding units that I've
16:20:26 15 attached myself to that call, so they know I'm going with
16:20:29 16 them. Sometimes I choose to respond with them in stealth mode
16:20:33 17 to not notify them that I'm coming on the call with them, so,
16:20:37 18 they don't have any preconceived ideas of why I might be
16:20:40 19 coming.

16:20:41 20 Q. Okay. And are there any other reasons that you might
16:20:43 21 engage in a stealth call besides -- you know, why you wouldn't
16:20:47 22 hit that self-assign button?

16:20:49 23 A. A lot of times I will do it because I want to get there to
16:20:54 24 provide assistance with my medics. I get there and, again,
16:20:59 25 sometimes they have preconceived ideas of what I'm there for.

16:21:02 1 Q. Okay. Now, when you hit the self-assign button, do you
16:21:07 2 remain an available resource to the system?

16:21:10 3 A. When I hit the self-assign button, I'm assigned to that
16:21:13 4 call. So I'm not available at that point to respond to other
16:21:16 5 calls.

16:21:16 6 Q. So if you want to respond to a call but remain available
16:21:19 7 to the system, can you do a stealth call?

16:21:22 8 A. Absolutely.

16:21:23 9 Q. Okay. Is that something that you do on occasion?

16:21:25 10 A. Yes. That's one of the other reasons I would go in that
16:21:28 11 stealth mode to that call, is to remain available as a resource
16:21:31 12 to the system.

16:21:32 13 Q. And if we look back at Plaintiffs' Exhibit 23, in fact,
16:21:36 14 EMS itself is trying to develop ways that you can go on these
16:21:40 15 calls -- these self-assigned calls and still remain an
16:21:44 16 available resource to the system, isn't it?

16:21:46 17 A. That's correct.

16:21:47 18 Q. And isn't that what this policy is here? They put a new
16:21:50 19 button on, the AVDL button?

16:21:53 20 A. That's correct.

16:21:53 21 MR. COPPOLA: Your Honor, once again, I have to
16:21:55 22 object to leading.

16:21:56 23 MR. DEATS: I'm sorry, Your Honor. I'll rephrase the
16:21:58 24 question.

16:21:58 25 Q. (BY MR. DEATS) Okay. We're looking at Plaintiffs'

16:22:00 1 Exhibit 23. Do you see the third paragraph? It talks about an
16:22:04 2 AVDL button?

16:22:06 3 A. Yes, I do.

16:22:06 4 Q. And what's the AVDL button?

16:22:09 5 A. AVDL stands for Available Delay. When a commander goes on
16:22:13 6 self-assigns on a call with another unit, we're assigned to
16:22:18 7 that unit and not available for additional dispatch. If I get
16:22:22 8 on scene and then hit the AVDL button, the CAD system will
16:22:27 9 recognize me as an available resource. That requires that I
16:22:30 10 don't get completely involved in the call or help -- kind of
16:22:34 11 remain back from the call a little bit and not be the primary
16:22:37 12 caregiver.

16:22:38 13 If there comes a time during that call where I get
16:22:41 14 engaged in patient care, I'm to notify my dispatcher via radio
16:22:46 15 to put me back on scene and remove me from available status so
16:22:50 16 I can continue providing patient care.

16:22:53 17 Q. And let's go again to the types of care that a commander
16:22:58 18 may do on any of these calls. What sorts -- you know, I've
16:23:03 19 heard a lot about the fact that you're there primarily to
16:23:06 20 provide incident command and scene safety. Does that accord
16:23:10 21 with your experience?

16:23:11 22 A. No, it does not.

16:23:12 23 Q. What is your experience about the types of things that
16:23:15 24 you're doing when you're making these calls, whether
16:23:18 25 self-assigned or, you know, assigned by dispatch?

16:23:20 1 A. To some extent, it depends on when I arrive. If I arrive
16:23:24 2 prior to the ambulance, my job is to provide initial patient
16:23:28 3 care -- scene size-up, scene safety, initial patient care, just
16:23:32 4 like any other paramedic would. If I arrive after the
16:23:35 5 ambulance does, I become an extra set of hands to them. I can
16:23:38 6 set up medications for them. I can go ahead and do medical
16:23:41 7 procedures for them just like they can because I'm credentialed
16:23:46 8 to do the same kind of thing.

16:23:48 9 Q. Now, you said you can do that?

16:23:50 10 A. Yes. I do do that.

16:23:51 11 Q. How often would you say that you provide direct patient
16:23:55 12 care?

16:23:55 13 A. Daily.

16:23:56 14 Q. More than once daily?

16:23:57 15 A. Well, it depends on the district where I'm working. Some
16:23:59 16 districts are more geographically spread out and the call
16:24:04 17 volume is lower, so you may not have the opportunity to do it.
16:24:08 18 Other districts where the call volume is higher and more
16:24:11 19 densely packed into a smaller area, you may do it multiple
16:24:14 20 times in a day.

16:24:15 21 Q. And I take it from when we went over the suburban and the
16:24:20 22 urban response things, there's a lot of types calls that you're
16:24:24 23 called upon to make from time to time, correct?

16:24:26 24 A. Yes.

16:24:26 25 Q. I mean, it's not just the pure medical call where somebody

16:24:30 1 calls because they're having chest pains, is it?

16:24:33 2 A. No.

16:24:34 3 Q. There's all sort of scenes where you may be called, just

16:24:37 4 like any other paramedic?

16:24:39 5 A. Certainly.

16:24:39 6 Q. Now, let's talk about incident command. Are you familiar

16:24:46 7 with the system known as NIMS?

16:24:49 8 A. Yes, I am?

16:24:50 9 Q. And what does that stand for?

16:24:51 10 A. It stands for the National Incident Management system.

16:24:55 11 Q. Okay. And we've sometimes referred to that as the ICS or

16:25:00 12 Incident Command System?

16:25:02 13 A. Correct.

16:25:02 14 Q. That's the older, more common term?

16:25:04 15 A. Yes.

16:25:05 16 Q. And what is ICS?

16:25:07 17 A. ICS is a standard protocol that's accepted nationwide as

16:25:15 18 to how incidents should be managed. Usually it pertains to

16:25:21 19 bigger incidents. It's not necessarily a single individual who

16:25:23 20 might have called 9-1-1, but bigger -- things like big traffic

16:25:29 21 accidents or a plane crashed into a building.

16:25:32 22 Q. And sometimes when you report to accidents, you're

16:25:36 23 reporting and doing incident command type events, aren't you?

16:25:40 24 A. Yes, I am.

16:25:41 25 Q. Do you consider that to be unrelated to patient care?

16:25:44 1 A. It's directly related to patient care.

16:25:47 2 Q. How is it related to patient care, in your opinion?

16:25:50 3 A. Everything I do is directly related to patient care. My

16:25:52 4 job as an EMS provider is integral to patient care.

16:25:57 5 Q. Now, is incident -- are district commanders the only

16:26:00 6 persons who can establish incident care in the hierarchy of the

16:26:03 7 Operations Division?

16:26:04 8 A. No, they are not.

16:26:05 9 Q. Who else can become an incident commander on a scene of an

16:26:09 10 accident or something of that nature?

16:26:11 11 A. Any first responder that arrives first on scene can go

16:26:14 12 ahead and establish incident command on any incident, whether

16:26:20 13 that's an EMT provider off of a fire engine or a paramedic off

16:26:24 14 of an ambulance or a commander off of a command vehicle.

16:26:26 15 Q. I guess somebody is in charge of every incident, aren't

16:26:30 16 they?

16:26:30 17 A. To an extent, yes.

16:26:31 18 Q. I mean, it's not always an incident command because it's

16:26:35 19 not a big enough event, right?

16:26:36 20 A. Right.

16:26:36 21 MR. COPPOLA: Your Honor, I'm going to object as to

16:26:37 22 leading.

16:26:38 23 THE COURT: Sustained.

16:26:43 24 MR. DEATS: I'll move on, Your Honor.

16:26:44 25 Q. (BY MR. DEATS) Tell me some of the things that you think

16:26:47 1 are patient care. Obviously, I guess, direct medical care,
16:26:50 2 right?

16:26:50 3 A. Yes.

16:26:50 4 Q. What other sorts of things, in your opinion, constitute
16:26:53 5 direct patient care?

16:26:53 6 A. Direct patient care is comprised of a number of things --
16:26:57 7 interviewing patients and family members to understand what the
16:27:00 8 underlying issue is, initially checking vital signs on
16:27:06 9 patients, patient assessment, checking them for injuries,
16:27:11 10 monitoring blood glucose, application of cardiac monitors,
16:27:16 11 administration of medications or life-saving procedures all
16:27:19 12 constitute patient care.

16:27:20 13 Q. If you're talking to distraught family members, do you
16:27:24 14 have an opinion about whether or not that relates to patient
16:27:27 15 care?

16:27:27 16 A. It is part of patient care.

16:27:28 17 Q. What about if you're holding back a crowd from a scene?
16:27:31 18 Do you have an opinion about whether or not that relates to
16:27:34 19 patient care?

16:27:35 20 A. That pertains to scene safety for my providers, and that
16:27:38 21 is part of patient care.

16:27:39 22 Q. What about if you're communicating with dispatch or the
16:27:41 23 hospital about what's going on?

16:27:43 24 A. Those are all parts of patient care, yes.

16:27:46 25 Q. Scene control?

16:27:47 1 A. Also part of patient care.

16:27:48 2 Q. Now, in your experience, is the amount of time that you're

16:27:54 3 spending on patient care, is it getting more, is it getting

16:27:56 4 less, is it the same or what?

16:27:58 5 A. It's increasing.

16:28:00 6 Q. And, in fact, if I could turn your attention to

16:28:02 7 Plaintiffs' Exhibit 44, do you recognize this as a memorandum

16:28:20 8 that James Hawley sent to the district commanders under his

16:28:23 9 command recently?

16:28:23 10 A. Yes, I do.

16:28:24 11 Q. Now, James Hawley is in what rank?

16:28:26 12 A. He is a division chief.

16:28:28 13 Q. So he's your boss or was your boss?

16:28:30 14 A. He is one of the bosses right above me, yes.

16:28:32 15 Q. Okay. I understand that he recently moved out of

16:28:35 16 Operations?

16:28:36 17 A. To another division, yes.

16:28:37 18 Q. Okay. Now, did you -- were you one of the ones that got a

16:28:40 19 copy of this memorandum?

16:28:42 20 A. I was forwarded a copy of this memorandum.

16:28:45 21 Q. Okay. And I'm looking at the fourth paragraph. It starts

16:28:53 22 with "I have asked each ..."

16:28:56 23 A. Yes.

16:29:03 24 Q. I'll ask you to read that to yourself and indicate to me

16:29:06 25 when you've finished.

16:29:07 1 A. (Reviews document)

16:29:17 2 Okay.

16:29:17 3 Q. Now, what do you understand him to be saying to you when
16:29:22 4 he wants you to be more cognitive of geographical coverage
16:29:26 5 needs for commanders?

16:29:27 6 MR. COPPOLA: Objection. Calls for speculation,
16:29:30 7 Your Honor.

16:29:30 8 MR. DEATS: Your Honor, this was a directive that was
16:29:32 9 given to him for the purpose of advising him in his work. I'm
16:29:35 10 simply asking him for his understanding.

16:29:37 11 THE COURT: Well, lay the predicate for his
16:29:38 12 understanding. Don't ask him generally.

16:29:41 13 MR. DEATS: Okay.

16:29:41 14 Q. (BY MR. DEATS) Did you -- you received -- you received
16:29:45 15 this memo, and you've read it, right?

16:29:47 16 A. Yes, I have.

16:29:48 17 Q. And when you read the memo, did you -- did you form an
16:29:52 18 understanding of what it was that Mr. Hawley was trying to
16:29:55 19 communicate to the commanders about the way they did their
16:29:58 20 jobs?

16:29:58 21 A. Yes, I did.

16:29:59 22 Q. And what was your understanding with regards to this
16:30:01 23 paragraph?

16:30:02 24 A. It was my understanding that Chief Hawley was requesting
16:30:04 25 the district commanders to remain in or about their response

16:30:08 1 areas and be more cognitive of remaining in and about their
16:30:13 2 response areas to be available for calls.

16:30:15 3 Q. And I want to look down at item number five at the very
16:30:18 4 bottom of the exhibit. Did you read this statement as well?

16:30:30 5 A. Yes, I did.

16:30:31 6 Q. And what does it mean to you when you hear the system is
16:30:35 7 "getting hammered"?

16:30:36 8 A. "Getting hammered" in the EMS jargon is when the system is
16:30:42 9 overwhelmingly busy. And it was the expectation of
16:30:45 10 Chief Hawley that we be out there helping facilitate call
16:30:52 11 volume, helping run medical calls, and giving the ambulances
16:30:55 12 help to run medical calls as well.

16:30:57 13 MR. COPPOLA: Objection, Your Honor.

16:30:58 14 Mischaracterizes the exhibit.

16:30:59 15 MR. DEATS: Your Honor, I asked him for his
16:31:01 16 understanding, and I believe he provided it.

16:31:03 17 THE COURT: The jury will consider the following
16:31:05 18 testimony as only what his understanding is of the exhibit and
16:31:09 19 can draw their own conclusion from what the exhibit says.

16:31:13 20 MR. DEATS: Okay.

16:31:14 21 Q. (BY MR. DEATS) Let's talk about the relative importance of
16:31:19 22 your supervisory and your patient care duties. In your
16:31:23 23 opinion, what's the most important part of your job?

16:31:28 24 A. The most important part of my job is to be available as a
16:31:33 25 resource to the citizens of Austin and Travis County as a

16:31:36 1 medical responder.

16:31:37 2 Q. Okay. During what part of your shift are you available as
16:31:40 3 a resource for that purpose?

16:31:41 4 A. For my entire shift.

16:31:43 5 Q. And why do you think that's the most important aspect of
16:31:46 6 your job, given all the other supervisory duties that you've
16:31:50 7 talked about?

16:31:50 8 A. It's what EMS does. It's what the citizens expect of us
16:31:54 9 and what I expect of my peers and myself as well.

16:31:57 10 Q. Where is most of your day spent if not in your station?

16:32:01 11 A. In my vehicle out in the field.

16:32:04 12 Q. Okay. And what are you doing in your vehicle out in the
16:32:07 13 field?

16:32:07 14 A. It's a large geographic district. It's driving between
16:32:12 15 stations and driving between response areas. But it's being
16:32:16 16 available to my crews and to visit my crews, to make -- to
16:32:19 17 respond to calls in my district, to respond to calls with my
16:32:23 18 crews, and make sure my crews have what they need to take care
16:32:27 19 of our patients.

16:32:28 20 Q. Okay. You talked about the amount of time you spend doing
16:32:31 21 office duties, correct?

16:32:32 22 A. Yes.

16:32:33 23 Q. Now, let's talk about some statistics. Early on in the
16:32:42 24 case the City provided some statistical information that
16:32:44 25 indicated that commanders only respond to about 5 percent or

16:32:47 1 less of the calls made to the system, correct?

16:32:49 2 A. Yes.

16:32:50 3 MR. COPPOLA: Objection, Your Honor. Leading and
16:32:52 4 he's talking about --

16:32:53 5 MR. DEATS: Your Honor, I'm just laying the predicate
16:32:55 6 for the question I'm really going to ask.

16:32:57 7 THE COURT: Well, go ahead and ask the question.

16:32:59 8 MR. DEATS: Okay.

16:32:59 9 Q. (BY MR. DEATS) Now, you're aware -- at any one time,
16:33:09 10 approximately how many commanders are there in the Field
16:33:12 11 Operations Division?

16:33:15 12 A. On duty?

16:33:16 13 Q. Let's talk about right now. How many commanders do you
16:33:19 14 have in the Field Operations Division?

16:33:21 15 A. Currently, I believe we have 23 commanders in the Field
16:33:25 16 Operations Division.

16:33:26 17 Q. And how many paramedics, if you know, do you have in the
16:33:31 18 division?

16:33:33 19 A. Somewhere around 330.

16:33:35 20 Q. Okay. And I guess in 2009, back, you know, the relevant
16:33:40 21 period, those numbers both were a little bit decreased, right?

16:33:44 22 A. Yes.

16:33:44 23 Q. And those two groups together comprise the group that's
16:33:48 24 available for response, right?

16:33:50 25 A. That's correct.

16:33:51 1 Q. So you have maybe 23 commanders, you said, and 330
16:33:55 2 paramedics?

16:33:56 3 A. Yes.

16:33:56 4 Q. So we could do the math and find out what percentage of
16:33:59 5 the total response force commanders make up, couldn't we?

16:34:02 6 A. Yes.

16:34:03 7 Q. And do CAD records, by the way, capture all the calls that
16:34:07 8 are made by field commanders?

16:34:09 9 A. No, they do not.

16:34:10 10 Q. What calls do they not capture?

16:34:12 11 A. Those calls that we referred before as stealth calls will
16:34:16 12 not show up as my being assigned to them.

16:34:20 13 Q. Okay. Now, you participated in doing a statistical
16:34:24 14 analysis of data provided by the City, did you not?

16:34:28 15 A. Yes, I did.

16:34:29 16 Q. And what was the purpose of the analysis that we were
16:34:33 17 doing?

16:34:33 18 A. The purpose of the analysis was to show a comparison of --
16:34:38 19 by individual and by rank who responded to what percentage of
16:34:43 20 calls.

16:34:43 21 Q. Okay. And you helped analyze that data?

16:34:50 22 A. Yes, I did.

16:34:51 23 Q. And, of course, there were thousands and thousands of
16:34:53 24 pages, weren't there?

16:34:54 25 A. Yes. Thousands.

16:34:55 1 Q. So we needed the help of a computer, didn't we?

16:34:58 2 A. Yes.

16:34:58 3 Q. Now, I want to direct your attention to Plaintiffs'

16:35:01 4 Exhibit 46. By the way, this data covered a period from 2008

16:35:10 5 and 2011, correct?

16:35:11 6 A. Yes.

16:35:11 7 Q. The data that the City gave us covered that period of

16:35:15 8 time?

16:35:15 9 A. Yes, it did.

16:35:16 10 Q. And were there any EMTs in the system at that time?

16:35:22 11 A. No, there were not.

16:35:24 12 Q. Okay. EMTs became a classification, I think you said,

16:35:28 13 only this year?

16:35:29 14 A. Last year, yes.

16:35:30 15 Q. So in looking at medics, you were just looking at clinical

16:35:34 16 specialists or the captains and looking at the paramedics,

16:35:38 17 right?

16:35:38 18 A. That's correct.

16:35:39 19 Q. And you were also looking at the field commanders,

16:35:42 20 correct?

16:35:42 21 A. Yes.

16:35:42 22 Q. And you looked at those that worked those entire periods,

16:35:46 23 and you tried to make calculations, did you not?

16:35:49 24 A. Yes, we did.

16:35:50 25 Q. And what were the types of calculations you were trying to

16:35:53 1 make?

16:35:53 2 A. They were trying to establish how many calls commanders

16:35:56 3 actually ran -- dispatched to and also ran as dispatched to and

16:36:05 4 self-assigned to. And then made a comparison and a ratio

16:36:09 5 between the number of calls that they ran versus number of

16:36:12 6 calls individual crews ran.

16:36:13 7 Q. Okay. And we ran those for 2008 and 2011, right?

16:36:18 8 A. Yes.

16:36:18 9 Q. And then so we're showing the calls there -- on the first

16:36:22 10 page we're showing the calls there for -- per commander and the

16:36:26 11 calls there per crew, right?

16:36:28 12 A. Yes.

16:36:28 13 Q. And a crew is what?

16:36:30 14 A. A crew consists of two paramedics and an ambulance.

16:36:35 15 Q. So when an ambulance responds, it's going to have a crew

16:36:38 16 on it, right?

16:36:39 17 A. Yes.

16:36:39 18 Q. Okay. And so -- and then we tried to determine the

16:36:41 19 percentage rate, did we not?

16:36:43 20 A. Yes.

16:36:43 21 Q. And if we look at those percentages, what percentage of

16:36:46 22 total calls did commanders do, vis-a-vis crews, in 2008?

16:36:52 23 A. 2008, the total calls was 30.51 percent.

16:36:56 24 Q. So you responded to 30 percent as many calls as did the

16:37:00 25 crews?

16:37:01 1 A. Yes.

16:37:01 2 Q. And then in 2011 how did that percentage change, if at

16:37:05 3 all?

16:37:06 4 A. It increased to 35.57 percent.

16:37:10 5 Q. And then if we look at the dispatched calls only, the ones

16:37:13 6 you're actually dispatched to as an available resource, in 2008

16:37:17 7 what was that percentage?

16:37:18 8 A. That percentage was 18.53 percent in 2008.

16:37:22 9 Q. And what was it in 2011?

16:37:24 10 A. It was 22.83 percent in 2011.

16:37:27 11 Q. Okay. And then if we look at the second page of the

16:37:30 12 exhibit, it's just a graphic display of that showing the

16:37:37 13 percentages?

16:37:38 14 A. That's correct.

16:37:39 15 Q. Now, of course, what that indicates is you don't respond

16:37:42 16 to as many calls as they do, do you?

16:37:45 17 A. No, we do not.

16:37:46 18 Q. But as we covered with Plaintiffs' Exhibit 12, what types

16:37:50 19 of calls typically are you called to run?

16:37:53 20 A. As commanders we're called to the most serious calls, the

16:37:56 21 priority one and two calls, specifically.

16:37:58 22 Q. Okay. And, now, you've got your own experience, don't

16:38:04 23 you?

16:38:04 24 A. Yes, I do.

16:38:05 25 Q. And you've been -- you've been both in the busy districts

16:38:09 1 and you've been in the less busy districts, haven't you?

16:38:12 2 A. Yes.

16:38:13 3 Q. Okay. Let's talk about when you're in a less busy
16:38:16 4 district. Do you have a sense on average of how many calls you
16:38:19 5 may be dispatched to a shift?

16:38:21 6 A. In a less busy district, during a 24-hour shift, I might
16:38:24 7 be dispatched to two calls, maybe three calls, sometimes.

16:38:28 8 Q. Okay. And what about a paramedic or a clinical specialist
16:38:33 9 on that same -- in that same district? How many calls on
16:38:37 10 average would you say they're dispatched to?

16:38:39 11 A. On average, probably four or five.

16:38:44 12 Q. And then, when you're in a more busy district, how -- what
16:38:50 13 effect does that have on the rate at which you're dispatched?

16:38:53 14 A. It's greatly increased in the busy districts.

16:38:55 15 Q. In the busy districts, on average in a 24-hour shift, how
16:39:00 16 many calls would you say you're dispatched on?

16:39:02 17 A. As commander in a busy district, I'd be dispatched on
16:39:07 18 anywhere from five to seven calls.

16:39:09 19 Q. And what about your paramedics or clinical specialists?
16:39:13 20 How many calls might they expect on average?

16:39:14 21 A. On average, it does vary. But it could be anywhere from
16:39:18 22 eight to 15 calls.

16:39:19 23 Q. And then, of course, you -- there we're talking about
16:39:26 24 dispatched calls. There are the self-assigned calls, are there
16:39:30 25 not?

16:39:31 1 A. That's correct.

16:39:31 2 Q. How many self-assigned calls would you say you make on

16:39:35 3 average in a shift?

16:39:35 4 A. In a slower district, one or two.

16:39:37 5 Q. Busy district?

16:39:39 6 A. Three or four.

16:39:40 7 Q. And those are in addition to the ones that you're

16:39:44 8 dispatched on?

16:39:45 9 A. That's correct.

16:39:45 10 Q. Now, I want to ask you, if you could, to turn to

16:39:50 11 Plaintiffs' Exhibit 45. Do you recognize this document?

16:40:05 12 A. Yes, I do.

16:40:06 13 Q. Could you describe it for me?

16:40:11 14 A. It's the City of Austin's medical release to return to

16:40:15 15 work.

16:40:17 16 Q. And is this -- if you look at the job title up at the top

16:40:22 17 part of the page, what job title does this cover?

16:40:25 18 A. This is specific to the EMS district commander and EMS

16:40:29 19 operations supervisor.

16:40:30 20 Q. Okay. And, again, those are just two ways of saying the

16:40:33 21 same thing?

16:40:33 22 A. That's correct.

16:40:34 23 Q. Okay. And read that sentence immediately below that.

16:40:38 24 What does that say?

16:40:39 25 A. It says: "This position requires the same physical

16:40:42 1 patient care requirements as an EMS paramedic, but they are not
16:40:47 2 performed as frequently."

16:40:50 3 Q. And then if we look at subsection A, "Most Frequently
16:40:53 4 Performed Tasks," it lists some tasks there, does it not?

16:40:58 5 A. Yes, it does.

16:40:59 6 Q. Is this a document that's currently in use?

16:41:01 7 A. Yes, it is.

16:41:03 8 Q. Okay. And looking at some of these bullet points, let's
16:41:10 9 look at that third bullet point. What is that talking about?

16:41:15 10 A. It says, "Lifting 30-pound equipment, aid bags, cardiac
16:41:21 11 monitors, portable suction, et cetera."

16:41:23 12 Q. What type of equipment is that?

16:41:25 13 A. That's all the medical equipment that we carry on our
16:41:29 14 ambulances and on our command vehicle.

16:41:31 15 Q. Is that something you're required to do in your job?

16:41:34 16 A. Yes.

16:41:34 17 Q. Look at the next bullet point, "Loading and unloading
16:41:37 18 stretchers." Is that something that you're asked to do from
16:41:47 19 time to time on your job?

16:41:48 20 A. Yes.

16:41:48 21 Q. Looking at lifting patients of all sizes, ranging from
16:41:52 22 children to bariatric patients." Is that something you're
16:41:55 23 asked to do?

16:41:56 24 A. Yes.

16:41:56 25 Q. What types of activities are these?

16:42:02 1 A. These are medical -- they're medical activities, ones that
16:42:08 2 all paramedics in our system are required to perform.

16:42:11 3 Q. And this is under the subject heading "Most Frequently
16:42:14 4 Performed Tasks"?

16:42:16 5 A. Yes.

16:42:16 6 Q. Okay. And it also talks about providing care in a moving
16:42:22 7 ambulance. Now, we talked about how a command vehicle doesn't
16:42:26 8 have a stretcher and can't transport, right?

16:42:29 9 A. That's correct.

16:42:30 10 Q. How is it, then, that you could be required to provide
16:42:33 11 care in a moving ambulance?

16:42:34 12 A. There are times when I do wind up in the back of an
16:42:37 13 ambulance on a call.

16:42:38 14 Q. How would that happen?

16:42:39 15 A. Again, we're dispatched to the most severe calls, the ones
16:42:43 16 that are most medically intensive and critical thinking is of
16:42:48 17 vital importance and also the ability to perform these advanced
16:42:51 18 life support tasks. Sometimes having an extra set of advanced
16:42:54 19 life support hands in the back of that ambulance is essential.
16:42:58 20 There are times where I may be in the back of an ambulance
16:43:00 21 helping out with that.

16:43:02 22 Sometimes when I arrive first on the scene, in order
16:43:05 23 to maintain continuity of patient care, I may continue the
16:43:08 24 patient care all the way to the hospital and have one of the
16:43:09 25 paramedics drive my unit to the hospital behind the ambulance.

16:43:12 1 Q. And if you look at page 2 of the exhibit, up at the very
16:43:17 2 top, item F, physical abilities, it describes some of the
16:43:20 3 physical abilities that a district commander needs?

16:43:23 4 A. Yes.

16:43:23 5 Q. It talks about "performing strenuous physical
16:43:29 6 requirements, such as CPR, lifting and moving of equipment and
16:43:33 7 patient's. Is this something that you're asked to do on your
16:43:36 8 job?

16:43:36 9 A. Yes.

16:43:37 10 Q. And when you've been injured or ill for more than five
16:43:40 11 days, is this a form you're required to provide?

16:43:43 12 A. Yes.

16:43:44 13 Q. And looking at page 3 of the form, does it have to be
16:43:48 14 signed by anybody other than yourself?

16:43:50 15 A. It's supposed to be signed by a health care provider.

16:43:55 16 Q. Okay. And what's the purpose of the health care
16:43:58 17 provider's signature?

16:43:58 18 A. To confirm that I am fit for duty.

16:44:00 19 Q. Okay. Fit to do all of the things that are in this page?

16:44:03 20 A. Yes.

16:44:04 21 Q. So you spend the majority of your day in the field but
16:44:18 22 during what portion of the day are you actually subject to
16:44:23 23 being called to the field?

16:44:24 24 A. I'm subject to being called to duty in the field all 24
16:44:28 25 hours on my shift.

16:44:29 1 Q. And is there any duty that you have that would take
16:44:33 2 precedence over a page to respond to a call?
16:44:38 3 A. I can't think of any of my duties -- my supervisor
16:44:42 4 administrative duties that would supersede and take precedence
16:44:46 5 of my duty to respond to that call.

16:44:49 6 MR. DEATS: Okay. Pass the witness.

16:44:52 7 THE COURT: Cross-examination?

CROSS-EXAMINATION

16:44:59 9 **BY MR. COPPOLA:**

16:44:59 10 Q. Good afternoon, Commander Fitzpatrick. How are you?

16:45:12 11 A. Good. How are you?

16:45:14 12 Q. Now, you agree, Commander Fitzpatrick, that as a field
16:45:22 13 commander in EMS, you have approximately 15 paramedics and
16:45:26 14 captains, field staff, that are subordinate to you in the
16:45:30 15 organization that you supervise; is that correct?

16:45:32 16 A. Yes.

16:45:33 17 Q. And you agree that field commanders are the first level of
16:45:37 18 management and supervisors in EMS; is that right?

16:45:41 19 A. Yes.

16:45:42 20 Q. And you agree also that paramedics do not manage or
16:45:46 21 supervise other staff. Isn't that true?

16:45:49 22 A. That's correct.

16:45:49 23 Q. And you agree also that captains, unless they happen to be
16:45:53 24 working higher class, are not recognized supervisors and
16:45:57 25 managers in EMS; isn't that right.

16:46:00 1 A. No. Not exclusively, no.

16:46:02 2 Q. They're not recognized as such; is that correct?

16:46:05 3 A. That's correct.

16:46:06 4 Q. They're field training officers; is that right?

16:46:09 5 A. That's one of their functions, yes.

16:46:10 6 Q. And you as a commander, you're actually responsible for

16:46:13 7 supervising those captains in their field training officer

16:46:17 8 responsibilities; isn't that right?

16:46:19 9 A. That's correct.

16:46:20 10 Q. In fact, ultimately, when there's a cadet under your

16:46:24 11 supervision, you ultimately have to sign off that all the

16:46:27 12 training was done correctly for that cadet; isn't that true?

16:46:30 13 A. I specifically don't, no.

16:46:31 14 Q. The field commanders at some point must sign off that

16:46:34 15 their captains have done the appropriate training; isn't that

16:46:37 16 true?

16:46:38 17 A. That falls to the district commander over training I don't

16:46:41 18 specifically sign off on my cadets ready for duty, no.

16:46:45 19 Q. But you supervise that training, though, don't you?

16:46:50 20 A. In so much as I observe the clinical specialists

16:46:55 21 performing the training, yes.

16:46:56 22 Q. I want to back up a little bit, Commander Fitzpatrick, and

16:46:59 23 talk a little bit about -- and you went over a little bit of

16:47:02 24 this with Mr. Deats -- but I want to talk about some of your

16:47:05 25 time earlier in EMS when you promoted to commander and decided

16:47:09 1 to become a commander.

16:47:12 2 As I understand it, you first started working towards
16:47:15 3 that goal in 2001-2002; is that right?

16:47:18 4 A. Yes.

16:47:19 5 Q. Okay. And you were selected as part of a competitive
16:47:23 6 process to attend what was called at that time a commander
16:47:26 7 college; is that true?

16:47:27 8 A. That's correct.

16:47:28 9 Q. And in that commander college, you, along with other
16:47:34 10 candidates to become commanders, you all received training on
16:47:37 11 management; is that right?

16:47:38 12 A. Yes.

16:47:38 13 Q. Training on city policies and procedures. Is that true?

16:47:43 14 A. Yes.

16:47:43 15 Q. You also received training on giving feedback --
16:47:46 16 performance feedback to staff. Is that true?

16:47:48 17 A. Yes.

16:47:49 18 Q. You were also trained in dealing with difficult employees,
16:47:52 19 weren't you?

16:47:53 20 A. Yes.

16:47:53 21 Q. And trained in ethics training, leave policies, FMLA,
16:48:00 22 et cetera. Is that true?

16:48:02 23 A. Yes.

16:48:02 24 Q. And it's true -- you agree, don't you, Commander
16:48:05 25 Fitzpatrick, that this commander college was specifically

16:48:09 1 designed to help you become a capable supervisor of paramedics
16:48:15 2 and field staff in EMS, don't you?
16:48:17 3 A. Yes.
16:48:18 4 Q. And do you agree that it did a good job in preparing you
16:48:23 5 for that task?
16:48:23 6 A. I would say so, yes.
16:48:26 7 Q. And after that you became what was then called an acting
16:48:29 8 district commander. Is that true?
16:48:31 9 A. That's correct.
16:48:32 10 Q. And that position doesn't exist anymore and hasn't existed
16:48:36 11 for some time; is that correct?
16:48:37 12 A. No. It doesn't exist anymore.
16:48:39 13 Q. It hasn't existed for some time. Is that true?
16:48:41 14 A. No, it has not.
16:48:43 15 Q. And when you became -- went to become a full-fledged
16:48:47 16 district commander, you had to undergo yet another competitive
16:48:51 17 process at that point, isn't that right?
16:48:53 18 A. That's correct.
16:48:53 19 Q. And you agree that, even today, when a captain or possibly
16:48:56 20 somebody else in the organization is desiring to become a
16:48:59 21 district commander, they have to undergo a competitive process
16:49:02 22 as well. Isn't that true?
16:49:04 23 A. Yes.
16:49:04 24 Q. But there are no -- and we're going to talk about this
16:49:08 25 more later, but there are no actual specific physical

16:49:10 1 requirements over and above what's required for all of the
16:49:15 2 uniformed staffed in EMS to become a commander. Is that true?
16:49:19 3 A. There are no specific physical requirements of a commander
16:49:23 4 over another field provider, no.
16:49:25 5 Q. And it's true that those -- those requirements are
16:49:29 6 applied, say, to cadets and paramedics when they first enter
16:49:33 7 the organization; is that right?
16:49:35 8 A. Yes.
16:49:35 9 Q. But there's no retest, for instance, as a commander to
16:49:39 10 ensure that you meet some sort of specific physical
16:49:41 11 requirement; is that right?
16:49:43 12 A. Not to my knowledge, no.
16:49:45 13 Q. And it's true as well that, as a field commander, you
16:49:49 14 actually receive ongoing training from EMS in management; isn't
16:49:53 15 that right?
16:49:54 16 A. Some. Yes.
16:49:54 17 Q. And EMS has either called in people to teach courses or
16:50:00 18 has sent you to courses in management, haven't they?
16:50:02 19 A. Yes.
16:50:02 20 Q. Now, we've talked at some length today about -- already
16:50:09 21 today about what, sort of, your typical day looks like as a
16:50:13 22 district commander. And I want to kind of go through this and
16:50:17 23 break that down a little bit further.
16:50:21 24 I guess first off I'd like to go ahead and put up
16:50:26 25 Defendant's Exhibit 1, if we could. I'm sorry. I guess I mean

16:50:35 1 Defendant's Exhibit 56. I apologize.

16:50:43 2 While that's coming up, Commander Fitzpatrick, you

16:50:48 3 agree that field commanders are assigned to manage one of six

16:50:52 4 districts in EMS; is that right, on any given shift?

16:50:55 5 A. Yes.

16:50:56 6 Q. And I think you said that you were assigned to district

16:51:01 7 six; is that right?

16:51:02 8 A. That's correct.

16:51:03 9 Q. And that has seven ambulances?

16:51:05 10 A. That's correct, yes.

16:51:06 11 Q. So there are six different stations; is that right?

16:51:11 12 There's an ambulance assigned to your station as well?

16:51:15 13 A. There are seven different stations and one ambulance

16:51:17 14 assigned to every station. And I'm assigned as well with an

16:51:20 15 ambulance in my station.

16:51:20 16 Q. I understand. Now, each ambulance is staffed with two

16:51:23 17 field people; is that right?

16:51:25 18 A. With two providers, yes.

16:51:27 19 Q. Okay. I want to just kind of direct your attention over

16:51:32 20 here to Defendant's Exhibit 56.

16:51:34 21 A. Mr. Coppola, I don't have Defendant's Exhibit 56 in my

16:51:37 22 binder.

16:51:38 23 Q. No. It's up here. I don't know if you can see it,

16:51:40 24 Commander Fitzpatrick.

16:51:42 25 A. I'll do my best.

16:51:43 1 Q. Okay. Well, what I'll point out to you, if you can't see
16:51:47 2 it, at the top of the organization is Chief Rodriguez; is that
16:51:51 3 right?

16:51:51 4 A. That's correct, yes.

16:51:52 5 Q. Underneath him is James Shamard. He's the chief of staff
16:51:57 6 of Field Operations; is that correct?

16:51:59 7 A. Correct.

16:51:59 8 Q. And I think -- I think you mentioned before that there
16:52:03 9 were six operations managers; is that right?

16:52:06 10 A. There were six, yes. I believe so.

16:52:08 11 Q. But it's correct to say there are only two individual
16:52:12 12 division chiefs or operations managers over Field Operations;
16:52:17 13 is that correct?

16:52:17 14 A. That's correct. For Field Operations there are two.

16:52:20 15 Q. Okay. And then there are six -- there's actually seven
16:52:25 16 boxes here for district commanders; is that correct?

16:52:28 17 A. It looks to be so, yes.

16:52:30 18 Q. Do you know why there are seven?

16:52:35 19 A. I can't read them from here. I know there are six
16:52:38 20 geographic districts, and because of the number of district
16:52:41 21 commanders we have, we have a seventh district that's just kind
16:52:43 22 of almost like an overflow, a floating a district.

16:52:47 23 Q. Okay. And then underneath each district commander, there
16:52:50 24 are multiple medic units; is that correct?

16:52:54 25 A. That's correct.

16:52:56 1 Q. Now, each of those boxes for medic units, that doesn't
16:52:59 2 represent sort of an individual person, does it? That
16:53:02 3 represents medic units, ambulances; is that correct?
16:53:06 4 A. That's correct. It represents the ambulance.
16:53:09 5 Q. And as you mentioned before, there were about actually 330
16:53:12 6 or so paramedics in EMS?
16:53:14 7 A. Yes.
16:53:14 8 Q. And the district commanders supervise that entire staff?
16:53:17 9 A. Yes.
16:53:18 10 Q. Now, when the -- when the field staff comes in and
16:53:29 11 reports -- and we've talked about these geographic districts --
16:53:32 12 they don't come centrally to some headquarters to start off
16:53:37 13 with, do they?
16:53:37 14 A. No, they do not.
16:53:38 15 Q. Everybody reports directly to a station; isn't that right?
16:53:41 16 A. Correct.
16:53:42 17 Q. And most of these stations -- in fact, there's really only
16:53:44 18 six where there's a commander. Most of these stations, the
16:53:47 19 field staff comes in and there's no supervisor there at all,
16:53:50 20 isn't that right?
16:53:51 21 A. That's correct.
16:53:52 22 Q. And so one of the things you do as the field commander is
16:53:56 23 you spend a large portion of your day -- you mentioned you
16:53:59 24 spend, say, six hours driving around. And you also spend
16:54:02 25 another five hours, isn't it true, actually visiting the

16:54:06 1 stations and speaking with the crews each day. Isn't that
16:54:09 2 true?

16:54:09 3 A. As best I can, yes.

16:54:11 4 Q. Now, it's true in your station, as the field commander,
16:54:17 5 you mentioned that you're possibly in there with some field
16:54:20 6 staff. But it's true that you as the field commander have a
16:54:23 7 separate office?

16:54:25 8 A. Yes, I do.

16:54:26 9 Q. Okay. And it's true that you can lock that office?

16:54:30 10 A. Yes, I can.

16:54:31 11 Q. And you may store some or have -- there may be access in
16:54:35 12 that office to personnel records?

16:54:38 13 A. We're not encouraged to keep personnel records in those
16:54:41 14 offices. I have access to a computer where I can get personnel
16:54:44 15 records. I generally keep it locked when I'm back there,
16:54:47 16 though.

16:54:47 17 Q. And the medics, they don't have the field staff and they
16:54:54 18 don't have a separate private office space like field
16:54:58 19 commanders, do they?

16:54:59 20 A. They have a common area which we call a day room, in which
16:55:03 21 they do their administrative work.

16:55:03 22 Q. But that's an area common to all the employees?

16:55:05 23 A. Yes.

16:55:05 24 Q. And it's true as well that you as the field commander have
16:55:08 25 a separate sleeping quarters separate from the field staff?

16:55:11 1 A. It's actually part of my office. I have a bunk in my
16:55:14 2 office.

16:55:14 3 Q. And the field staff shares the sleeping quarters; isn't
16:55:18 4 that right?

16:55:19 5 A. Yes.

16:55:19 6 Q. It's true as well that field staff are required to keep
16:55:23 7 the station clean and maintain the common areas in the station?

16:55:26 8 A. Yes.

16:55:27 9 Q. And you as the commander, you're not required to clean or
16:55:30 10 maintain the common areas, are you?

16:55:32 11 A. Not required, no.

16:55:34 12 Q. And as the commander, we've talked about the idea that you
16:55:39 13 may go around and visit the various stations. You can go into
16:55:43 14 any of your stations and do spot inspections on those stations
16:55:47 15 to make sure the crews are keeping them up to snuff, can't you?

16:55:50 16 A. Yes.

16:55:51 17 Q. We've also talked about the idea or the fact, I suppose,
16:55:58 18 that you're assigned a vehicle -- a command vehicle; is that
16:56:00 19 right?

16:56:00 20 A. Yes, I am.

16:56:01 21 Q. And that's physically a different vehicle than an
16:56:04 22 ambulance, isn't it?

16:56:06 23 A. Yes, it is.

16:56:07 24 Q. And, actually, as opposed to an ambulance, you actually
16:56:13 25 ride out alone in that vehicle?

16:56:16 1 A. Yes. I'm by myself.

16:56:18 2 Q. But an ambulance, it can only function with two crew

16:56:21 3 members. Isn't that true?

16:56:23 4 A. That's correct.

16:56:24 5 Q. And it's true as well that your command truck doesn't

16:56:28 6 actually carry a stretcher; isn't that right?

16:56:31 7 A. Not a stretcher as you would put a patient on an

16:56:34 8 ambulance. No, it does not.

16:56:36 9 Q. Now, it's true that when a piece of equipment breaks, say,

16:56:41 10 in an ambulance -- one of the ambulances in your district, one

16:56:45 11 of the things you'll do is you'll go -- you may go, if you

16:56:49 12 choose to, you may go take a piece of equipment from your

16:56:53 13 vehicle, say a cardiac monitor, and you may take that to the

16:56:56 14 crew and replace their malfunctioning cardiac monitor with your

16:57:00 15 cardiac monitor. Isn't that true?

16:57:02 16 A. That's correct.

16:57:03 17 Q. And at that point you would have to travel out and go to,

16:57:09 18 say, a central logistics area to pick up a replacement piece of

16:57:14 19 equipment; isn't that right?

16:57:16 20 A. That's correct.

16:57:17 21 Q. And you would give that piece of equipment to the crew

16:57:19 22 even if it meant you couldn't respond to a call yourself as the

16:57:23 23 commander, wouldn't you?

16:57:24 24 A. That's correct.

16:57:25 25 Q. And during that time that you choose to give the piece of

16:57:28 1 equipment to the crew, you're out of service, aren't you?

16:57:32 2 A. Not necessarily.

16:57:33 3 Q. You could be, though; isn't that true?

16:57:36 4 A. I could also not be. I'm in a reduced response capacity

16:57:40 5 at that time, depending on the piece of equipment I gave them.

16:57:43 6 My cardiac monitor, for example, would be a critical piece of

16:57:47 7 equipment. But if someone were to go into cardiac arrest, as I

16:57:50 8 mentioned earlier, we carry AED. That could restart someone's

16:57:54 9 heart, potentially.

16:57:54 10 Q. I understand that, Commander Fitzpatrick, and I appreciate

16:57:58 11 that answer. Thank you. But there critical pieces of

16:58:02 12 equipment in your vehicle that you could choose to give to a

16:58:04 13 crew that would make you unavailable to respond to any call;

16:58:08 14 isn't that true?

16:58:09 15 A. It would put me in a reduced response capacity, yes. I

16:58:14 16 guess yes.

16:58:16 17 Q. So when you -- when you first come on duty at -- well,

16:58:24 18 before I move on from that topic, you also were speaking with

16:58:28 19 Mr. Deats about a couple of pieces of equipment that only the

16:58:32 20 command trucks carry. I think you mentioned a carbon monoxide

16:58:39 21 detector, a cyanide kit and a Stokes basket. Are those the

16:58:44 22 three piece of equipment?

16:58:45 23 A. Those are the three that come to mind, yes.

16:58:47 24 Q. Okay. Now, it's true, isn't it, that as a commander, just

16:58:52 25 because you carry them, that doesn't mean you're the --

16:58:55 1 commanders are the only people at EMS that are authorized to
16:59:00 2 use that equipment, does it?

16:59:01 3 A. Not authorized to use it. Any one of our medics that are
16:59:04 4 familiar with that equipment are authorized to use it. I'm
16:59:07 5 just the only one that carries it.

16:59:09 6 Q. So if you go to a call where there's, say, a carbon
16:59:12 7 monoxide incident, it's possible that you could just provide
16:59:15 8 that piece of equipment to the crew to use; isn't that true?

16:59:18 9 A. Yes.

16:59:22 10 Q. Now, when you -- excuse me. When you come on duty at
16:59:26 11 7 a.m., I think you mentioned one of the first things you do
16:59:30 12 every day is get a shift report from the off-going field
16:59:33 13 commander; isn't that right?

16:59:35 14 A. That's correct.

16:59:36 15 Q. And that report is designed to tell you about issues that
16:59:39 16 arose during the prior shift that you as the commander, the
16:59:43 17 manager of that district, may have to deal with that shift;
16:59:47 18 isn't that right?

16:59:47 19 A. Among other things, yes.

16:59:49 20 Q. That might include a facility -- some issue with one of
16:59:53 21 the stations, the facilities that's in your district that needs
16:59:57 22 to be addressed?

16:59:58 23 A. Yes.

16:59:58 24 Q. That might include a piece of broken equipment somewhere
17:00:01 25 that you have to deal with?

17:00:03 1 A. Yes.

17:00:03 2 Q. It might even include -- say there was a negative

17:00:08 3 interaction of some sort between one of the field staff and,

17:00:13 4 say, another first responder, say a police officer or a

17:00:16 5 firefighter. That can happen sometimes, too, can't it?

17:00:19 6 A. Yes.

17:00:19 7 Q. And you actually as the field commander, you have the

17:00:24 8 ability to pick up the phone and call a higher-ranking officer

17:00:28 9 say in the fire department to talk about that interaction,

17:00:32 10 don't you?

17:00:32 11 A. Yes.

17:00:33 12 Q. In fact, if you're dealing with one of the county

17:00:37 13 emergency service districts, you have the ability as the

17:00:41 14 commander to pick up the phone and call the chief at that

17:00:44 15 district, don't you?

17:00:44 16 A. I could.

17:00:46 17 Q. Now, you also get some other reports at the end of your

17:00:56 18 shift. Those are called op stat reports. Is that true?

17:00:59 19 A. That's correct.

17:01:00 20 Q. And those are reports that only commanders receive of the

17:01:03 21 people out in field. Is that true?

17:01:05 22 A. In the field, yes. Commanders and on up receive them in

17:01:09 23 the organization. But in the field only commanders receive

17:01:12 24 them, yes.

17:01:13 25 Q. So maybe a better way to say that is the paramedics and

17:01:16 1 captains don't receive those reports?

17:01:18 2 A. That's correct. They don't.

17:01:19 3 Q. Now, one of the -- you know, we've talked about a couple

17:01:26 4 of different types of those reports. I think we've already

17:01:28 5 talked about one that's the out-of-chute time, for instance.

17:01:30 6 There's a specific time standard, for instance, that a crew,

17:01:33 7 between the time they are dispatched to the call to the time

17:01:36 8 they start responding to the call, that's their out-of-chute

17:01:40 9 time; is that right?

17:01:41 10 A. That's correct.

17:01:42 11 Q. And when you get that report, you actually look through it

17:01:45 12 for instances of one of your crews where they didn't meet a

17:01:49 13 specific time standard; isn't that right?

17:01:52 14 A. That's correct.

17:01:52 15 Q. And then it's your responsibility as the field commander

17:01:55 16 to contact that crew or crews and kind of figure out what

17:01:59 17 happened, what the reason was why they were slow in responding

17:02:03 18 to a call. Isn't that true?

17:02:05 19 A. Yes.

17:02:07 20 Q. Now, in that explanation, you could -- could be mundane,

17:02:12 21 but you take that up to your chief; is that right?

17:02:15 22 A. Depending on the explanation, yes.

17:02:17 23 Q. And it could be a more serious issue in EMS, couldn't it?

17:02:22 24 A. Yes, it could be.

17:02:24 25 Q. Sometimes you're authorized to deal with those issues

17:02:27 1 yourself if the crew reports some mundane issue. Isn't that
17:02:30 2 true?

17:02:30 3 A. If it's a really mundane issue, yes.

17:02:32 4 Q. You also have the ability to make a note in an RMS file if
17:02:36 5 you feel like a crew has maybe violated a policy, for
17:02:40 6 instance. Isn't that true?

17:02:41 7 A. Yes.

17:02:41 8 Q. And, indeed, you could start a disciplinary investigation
17:02:44 9 if you thought the crew -- if their behavior was serious enough
17:02:49 10 to merit such an investigation, couldn't you?

17:02:52 11 A. I could start the investigation, yes.

17:02:55 12 Q. And any one of those reactions is up to you. You can just
17:02:57 13 talk with the crew, you can write it down in RMS, or you could
17:03:00 14 start a disciplinary investigation, couldn't you?

17:03:03 15 A. Yes.

17:03:05 16 Q. Now, you also get what's called a -- I don't know if this
17:03:09 17 is the technical term for it because I'm not in EMS, of
17:03:12 18 course. But you also get something called a hospital drop time
17:03:15 19 report or something like that?

17:03:16 20 A. Uh-huh.

17:03:16 21 Q. And that report -- is that a "yes," sir? I'm sorry.

17:03:20 22 A. Yes. I'm sorry.

17:03:22 23 Q. And that report, as I understand it, it tells you how long
17:03:25 24 the crew spends at a hospital dropping off a patient; is that
17:03:29 25 right?

17:03:29 1 A. It gives us those averages, yes.

17:03:32 2 Q. Okay. And you may notice, say, if you look at -- if you

17:03:36 3 look at those reports, you may notice, for instance, if a crew

17:03:40 4 has an issue at a particular hospital that's causing a number

17:03:44 5 of crews to spend too long there. Is that something you might

17:03:47 6 notice?

17:03:48 7 A. Yes.

17:03:48 8 Q. And you may even -- if you see an issue at a particular

17:03:52 9 hospital, again, you as the commander have the ability to pick

17:03:55 10 up the phone and talk to managers at the hospital about that

17:03:57 11 issue, don't you?

17:03:59 12 A. Yes.

17:03:59 13 Q. Now, in addition to -- to viewing these various op stat

17:04:10 14 reports --

17:04:10 15 THE COURT: Well, why don't we at this point, this is

17:04:13 16 a good time to take our evening recess.

17:04:15 17 Ladies and gentlemen, at this time we'll take our

17:04:17 18 evening recess. You'll be in recess until 9 o'clock in the

17:04:22 19 morning. Please be back in your jury room a little before

17:04:25 20 9:00.

17:04:26 21 Remember the instructions the Court has previously

17:04:28 22 given you: Do not talk about this case among yourselves or

17:04:32 23 with anyone else. Do not read any newspapers or observe any

17:04:36 24 radio -- observe or listen to any radio or television news

17:04:40 25 broadcast that may have information about this case in it. Do

17:04:43 1 not use any electronic device to try to find out information
17:04:47 2 about this case or to transmit any information about this
17:04:50 3 case. Drive carefully and don't forget to vote. And we'll see
17:04:54 4 you here in the morning.

17:04:56 5 (Recess)

17:04:57 6 (Open Court, no jury)

17:05:18 7 THE COURT: Court's in recess until 9 o'clock.

17:05:21 8 (End of transcript)

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1 **UNITED STATES DISTRICT COURT)**

2 **WESTERN DISTRICT OF TEXAS)**

3 I, Arlinda Rodriguez, Official Court Reporter, United
4 States District Court, Western District of Texas, do certify
5 that the foregoing is a correct transcript from the record of
6 proceedings in the above-entitled matter.

7 I certify that the transcript fees and format comply with
8 those prescribed by the Court and Judicial Conference of the
9 United States

10 WITNESS MY OFFICIAL HAND this the 12th day of August 2013.

11

12 /S/ Arlinda Rodriguez
Arlinda Rodriguez, Texas CSR 7753
Expiration Date: 12/31/2014
Official Court Reporter
United States District Court
Austin Division
501 West 5th Street, Suite 4152
Austin, Texas 78701
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